

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

10 October 2012

Supplementary Report of the Director of Finance

Part 1- Public

Executive Non Key Decisions

1 COUNCIL TAX – EMPTY HOMES PREMIUM

A report advising Members of the contents of a further consultation paper in respect of the empty homes premium and requesting Cabinet to approve the response to the consultation questions.

1.1 Introduction

1.1.1 As Members will have seen from my other report on this agenda regarding the empty homes premium, in June this year Members agreed that, in principle, consideration should be given to the adoption of a premium in respect of properties that have been empty for longer than two years.

1.1.2 I intend to submit a report in November this year requesting Members to decide whether they wish to adopt the premium. However, in the interim, the Government has issued **another consultation paper**, this time regarding those empty properties that they consider should be exempted from the premium. The consultation paper, entitled 'Technical Reforms to Council Tax – Determining the circumstances in which dwellings should not be liable to the empty homes premium.' is appended at **[ANNEX 1]**.

1.1.3 I agreed with the Leader and Cabinet Member for Finance that this consultation paper should be reported to this meeting as a supplementary item, in view of the timescales. The Leader of the Opposition Group was also in agreement with this approach.

1.2 The consultation paper

1.2.1 The consultation paper suggests that the following classes of property should not be liable to the empty homes premium:

- 1) Dwellings that are genuinely on the market for sale or letting;
- 2) Dwellings that are the sole or main residences of members of the armed forces, who are absent from the properties as a result of such service; and

- 3) Annexes that are deemed unoccupied because they are being treated by the occupiers of the main dwellings as part of the main dwellings

1.2.2 I give below my comments on each of the classes of property that the Government proposes to exempt from liability.

1.3 Dwellings that are on the market for sale or letting

1.3.1 The Government believes that the premium will provide a useful incentive to encourage property owners to take steps to make use of dwellings that have otherwise been left unoccupied and substantially unfurnished. The Government proposes that the premium should not be chargeable where owners are making genuine efforts to sell or let their properties. It considers that authorities will already have in place tools for assessing which dwellings would qualify for this exception in their locality.

1.3.2 I have reservations about the proposal to exempt properties from the premium in these circumstances. For the premium to apply, the property will have been unoccupied and unfurnished for two years. It seems that if the owners were genuine in their efforts to sell or let such properties, a sale or letting would have been achieved before the expiration of two years. I would be concerned that owners would make genuine efforts only once the premium had become payable. In addition, the question of what are genuine efforts to sell or let a property is a subjective decision, which could involve the Council in time-consuming correspondence and appeals.

1.4 Dwellings that are the sole or main residences of members of the armed forces, who are absent from the properties as a result of such service

1.4.1 The Government believes that members of the armed forces should face no disadvantage as a result of their service. Given this, the Government considers that it would not be appropriate for the premium to be chargeable on a dwelling that is the sole or main residence of a member of the armed forces, where that person is absent from that dwelling as a result of their service.

1.4.2 My feeling is that the proposal to exempt such dwellings has not been thoroughly thought through. If the property is the sole or main residence of a person serving in the armed forces and it is occupied, then the serviceman will be subject to the occupied rate of council tax and the empty homes premium cannot apply.

1.4.3 Following contact with the Department for Communities and Local Government, I have been informed that:

"The circumstance where the proposal intends to except from the Premium is where a property which is the sole or main residence of a member of the armed forces, who is absent from the property as a result of such service and the property is substantially unfurnished."

1.5 An annex deemed unoccupied because it is being treated by the occupier of the main dwelling, as part of that main dwelling

- 1.5.1 Under council tax legislation, parts of a dwelling constructed or adapted for separate occupation (e.g. annexes) are treated as separate dwellings for the purposes of council tax. Each dwelling could, therefore, potentially be liable for the empty homes premium.
- 1.5.2 I am unclear on what the Government is proposing. Annexes that cannot be let separately are already exempt from council tax. In other cases, where the annex can be separately let, it is not up to the owner of the main dwelling to deem the annex as unoccupied: that is a decision for the local authority. I believe the consultation paper should probably read 'An annex owned by the occupier of the main dwelling and, as such, considered, by the owner of the main dwelling, as incapable of separate occupation.', i.e. the owner does not wish to see anyone else living in the annex, as he feels it to be part of his home.

1.6 The consultation questions

- 1.6.1 The consultation paper poses three questions. These are set out below along with my suggested responses.

1) **Do you agree with the Government's proposals on the circumstances in which property should not be liable to the empty homes premium?**

No.

We consider that the various exemptions from council tax already in place mean that there is no necessity to exempt properties that are genuinely being marketed as available for sale or letting. In any case, we have reservations as to the administration of the exemption, if one were put in place, as the criteria would be highly subjective and open to different interpretation by billing authorities.

In respect of properties owned by servicemen, we fully support the Armed Forces Covenant and agree that service personnel should not be penalised by the fact that they are on active service. However, if the property is unoccupied and substantially unfurnished, it seems unlikely that it could be treated as a sole or main residence. The meaning of the term 'sole or main residence' has been before the Courts many times and it is, in our view, doubtful that the Courts would treat a substantially unfurnished property as a sole or main residence. That is particularly the case if the serviceman had never actually lived in the property. Should the Government wish to pursue the enactment of such an exemption, we would urge that careful consideration be given to the framing of the relevant legislation.

Apart from the foregoing, we appreciate that servicemen might wish to maintain a residence in this country whilst on service. However, we

wonder whether it is appropriate to exempt residences that are not actually furnished and could not, therefore, be used as a 'home' without the installation of furniture. It would seem discriminatory to others in a similar position and subject to the premium, for instance those on long-term work contracts abroad, who purchase a property for their eventual use on return to this country.

Regarding annexes, we appreciate the complexities of the issues and the strong feelings of some owners. However, these annexes are ones where occupation is not restricted to a member of the owner's family and, as such, are available for letting if the owner so chooses. It seems that an owner's right to let out an annex if he so chooses should be balanced by a responsibility to contribute to the council tax in respect of that annex. If an owner does not wish to pay the council tax in respect of the annex, then, in many cases, it is a simple matter to make changes to the annex to render it no longer liable to council tax.

2) **Do you consider that these circumstances should be set out in regulations?**

If the Government decides to implement the exemptions, we believe that they should be set out in regulations in an attempt to avoid inconsistencies in their application.

3) **Are there any other circumstances in which property should not be liable to the empty homes premium, and why?**

We do not believe so.

1.7 Legal Implications

1.7.1 None at this stage.

1.8 Financial and Value for Money Considerations

1.8.1 None at this stage.

1.9 Risk Assessment

1.9.1 Not applicable at this stage.

1.10 Equality Impact Assessment

1.10.1 See 'Screening for equality impacts' table at end of report

1.11 Recommendations

1.11.1 Members are **REQUESTED** to authorise me to respond to the consultation paper as detailed at Para. 1.6. above.

Background papers:

contact: Paul Griffin

Nil

Sharon Shelton
Director of Finance

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Consultation only.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	Consultation only
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		Not applicable.

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.