

Report to: Cabinet

Date: 7 December 2023

Title: Council Tax Discounts and Premiums

Report of: Tim Whelan, Director of Service Delivery

Cabinet member: Councillor Christine Robinson, Deputy Leader of Lewes District Council and Cabinet Member for Community Wellbeing

Ward(s): All wards

Purpose of report: To determine the level of certain Council Tax discounts and Council Tax premiums with effect from 1 April 2024 and 1 April 2025

Decision type: Budget and policy framework

Officer recommendation(s): That Cabinet recommend to full Council the approval and implementation of the following:

1. From 1 April 2024
 - (a) The adoption of a standard 0% discount for all Class D chargeable dwellings; and
 - (b) Levying the maximum level of premium i.e.:
 - Premium of 100% for dwellings which are unoccupied and substantially unfurnished (Empty Homes Premium) after 1 years up to 5 years of becoming empty;
 - Premium of 200% for dwellings which are unoccupied and substantially unfurnished (Empty Homes Premium) between 5 years and up to 10 years; and
 - Premium of 300% for dwellings which are unoccupied and substantially unfurnished (Empty Homes Premium) for 10 years or more.
2. From 1 April 2025
 - (a) The continued application of 0% discount for Class D and Empty Homes premiums at 100% effective when dwellings have been unoccupied and substantially unfurnished for 1 year; and
 - (b) The application of a premium (Second Homes Premium) of 100% for all dwellings that are no one's sole or main residence and which is substantially furnished.
3. Exception to premiums

Where premiums are to be applied, the Council is mindful of the current consultation by government which recommends exceptions in certain circumstances outlined within this report. Subject to the outcome of that consultation, it is recommended that the Section 151 Officer is given delegated powers to implement the Council's policy on premiums in line

with statute, the Council's requirements and any guidance given by the Secretary of State.

Reasons for recommendations:

- (a) To reduce the number of empty homes within the District in line with the Council's Empty Homes Strategy; and
- (b) To encourage the use of premises as main residences by local residents rather than second homes.

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1 Introduction

- 1.1 The report identifies decisions required by full Council and makes recommendations to change the Council's approach in respect of certain discretionary areas within Council Tax legislation. In the main, the changes will take effect from 1 April 2024. The Levelling Up and Regeneration Act will allow the Council to make further amendments to the levying of Council Tax premiums within the Borough with effect from both 1 April 2024 and 1 April 2025.
- 1.2 A large part of the Council Tax legislation is mandatory on all billing authorities within England. Discounts (such as Single Person Discounts), disregards and exemptions are set by statute with very little discretion allowed. However, there are a number of areas where each Council may determine the type and levels of charge to be made.
- 1.3 The main discretionary areas in place currently are as follows:
 - (a) Second homes (premises which are no-one's sole or main residence but are furnished);
 - (b) Unoccupied and substantially unfurnished premises;
 - (c) Unoccupied and substantially unfurnished premises which require or are undergoing structural repairs; and
 - (d) Currently, premiums where premises have been unoccupied and substantially unfurnished for a period exceeding 2 years.
- 1.4 When determining its policy, each billing authority has to decide the level of discount (if any) to be granted and the amounts (percentage) of any premium by the 31 March prior to the financial year in which it wants to introduce the changes.
- 1.5 Where a change is proposed, there is a requirement to determine the level of any discount or premium and a decision is now required to be made by full Council under Section 11A, 11B and the new 11C of the Local Government Finance Act 1992.
- 1.6 Once determined, any resolution of the Council will be published in a local newspaper(s) within 21 days of the decision.

The current situation

1.7 Currently there are 240 Long term empty properties and 254 second homes within the District and the Council has adopted the following level of discounts and premiums.

	Current policy
Second Homes No one's sole or main residence and which is substantially furnished. 28-day planning restriction ¹ (Class A)	0% discount
Second Homes No one's sole or main residence and which is substantially furnished. No planning restriction ² (Class B)	0% discount
Class C (Unoccupied dwelling with is substantially unfurnished)	0% discount
Class D Structural repairs (Unoccupied and substantially unfurnished) (Maximum 12 months)	50% discount for 12 months only
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty Homes premium) After 2 years and up to 5 years of becoming empty.	50% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty Homes Premium) Dwellings empty between 5 years and up to 10 years	50% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty Homes Premium) Dwellings empty for 10 years or more	50% premium

1.8 Until the legislation changed in 2013, mandatory exemptions would have been granted in place of Class C and Class D discounts giving a period of no charge for 6 months and 12 months respectively. It can be seen that, since that time, the Council, along with the majority of other billing authorities in England, has reduced the 'discount' available.

1.9 Class C discount was changed to 0% on 1 April 2020 and Class D remains as detailed above. The Council levies a 100% Council Tax charge on empty dwellings (homes) and dwellings in Class D would be subject to a 100% charge once the discount period had ended. Second homes are immediately charged at 100%.

1.10 Premiums were also introduced by government in 2013 with a view to encouraging homeowners to occupy homes and not leave them vacant in the long term. Initially premiums could only be charged at 50% but current legislation has now changed to allow a progressive charge to be made as follows:

¹ restricted by a planning condition preventing occupancy for a continuous period of at least 28 days

² the occupation of which is **not restricted** by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year.

- Dwellings left unoccupied and substantially unfurnished for 2 years or more, up to 100%;
- Dwellings left unoccupied and substantially unfurnished for 5 years or more, up to 200%; and
- Dwellings left unoccupied and substantially unfurnished for 10 years or more, up to 300%.

1.11 The Council has continued to charge premiums at the original level of 50% and it should be noted that premiums are charged in addition to the 100% Council Tax payable on empty premises.

1.12 Government, together with local authorities (including the District) has unfortunately seen a rise of in the number of empty homes together with a growth in second homes. Inconsistencies in the legislation have also been identified whereby a premium can be avoided by the taxpayer merely furnishing an empty premises, when it would become a 'second home' which currently has a maximum charge of 100%. The Council has previously identified this and, for a number of years, has proposed changes in the legislation to avoid this 'loophole'.

1.13 By amending the Local Government Finance Act 1992, the recently enacted Levelling-up and Regeneration Act 2023 ('the 2023 Act') addresses these inconsistencies and also brings more dwellings into use. This report makes recommendations to change the discounts currently being granted by the Council and also to introduce changes to the regimes for charging premiums as allowed within the legislation.

Changes to empty homes premiums (From 1 April 2024)

1.14 Section 80(1)(b) of the 2023 Act will permit billing authorities in England to impose an empty homes premium after one year instead of two. This gives effect to a commitment made by Government in the [Levelling Up White Paper](#) .

1.15 Section 80(1)(a) provides that billing authorities must have regard to any guidance issued by the Secretary of State when deciding whether to implement an empty homes premium and it is expected that the current guidance drafted by government in 2013 will be updated. This change to guidance will come into effect from the 2024/25 financial year.

1.16 Sections 81(2) and 81(4) provide that from 1 April 2024, a property can be charged an empty homes premium at 100% after one year, **even** if it became empty before 1 April 2024.

Introduction of premiums for second homes (From 1 April 2025)

1.17 At present, English billing authorities may only impose an empty homes premium on properties that are 'unoccupied and substantially unfurnished'. This term is defined via case law, not in legislation. However, it does not cover dwellings that are no one's sole or main residence but are furnished. An empty homes premium could, therefore, not be imposed on properties that are maintained as second homes for regular use by their owners.

1.18 Clause 73 of the Bill will insert a new section 11C into the Local Government Finance Act 1992. This will permit billing authorities to apply a premium to

properties that have no resident and are “substantially furnished”. The maximum Council Tax charge in these cases would be a standard 100% charge plus, if the recommendations are accepted by Council, a premium of 100% making a total Council Tax charge of 200%.

- 1.19 There would be no requirement for a property to have been used as a second home for a fixed period of time before the premium can apply.
- 1.20 As with other changes introduced by the Bill, section 11C (3) requires that the first decision to impose this class of premium must be taken at least 12 months before the financial year to which it would apply. In effect this means that premiums for second homes will not take effect until the 2025/26 financial year at the earliest. However, it is essential that a decision is made by Council before 31 March 2024 to give the required one year notice.
- 1.21 The Bill provides that a dwelling cannot be subject to both a second homes premium and an empty homes premium imposed under section 11B of the 1992 Act, and that an existing empty homes premium would cease to apply to a property which became subject to a second homes premium.

Premiums – generally

- 1.22 In line with all similar legislation, any decision made by the Council must be publicised in at least one local newspaper, within 21 days of its being taken.
- 1.23 Should the Council at any time wish to vary or revoke a decision to impose any type of premium, this can be done at any time before the beginning of the financial year to which it would apply.
- 1.24 The Secretary of State has the power to prescribe certain classes of property that will not be subject to an empty homes premium. Currently these are homes that are empty due to the occupant living in armed forces accommodation for job-related purposes, or annexes being used as part of a main property.
- 1.25 In line with that, a consultation has also been issued by government on proposals to delay the application of premiums and it is expected that the areas included in the consultation will form either guidance or regulations which authorities will be required to adhere to.

Changes proposed from 1st April 2024

- 1.26 The continued pressure on local authority finances (both the District Council and the Major Preceptors) together with the need to encourage all owners of domestic premises to bring them back into use, makes it essential that the Council changes its approach to empty homes.
- 1.27 From 1 April 2024, the Council has the opportunity to make changes to both its discretionary discounts and also to the current premium regime in order to maximise its income and that of the major preceptors (in proportion to their share of the Council Tax). **In view of this, it is recommended that the Council adopt the following changes with effect from 1 April 2024 as follows :**

	Current policy	Proposed policy
Second Homes No one's sole or main residence and which is substantially furnished. 28-day planning restriction ³ (Class A)	0% discount	0% discount (no change)
Second Homes No one's sole or main residence and which is substantially furnished. No planning restriction ⁴ (Class B)	0% discount	0% discount (no change)
Class C (Unoccupied dwelling with is substantially unfurnished)	0% discount	0% discount (no change)
Class D Structural repairs (Unoccupied and substantially unfurnished) (Maximum 12 months)	50% discount for 12 months only	0% discount
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes premium) After 1 year up to 5 years of becoming empty.	50% premium	100% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes Premium) Dwellings empty between 5 years and up to 10 years	50% premium	200% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes Premium) Dwellings empty for 10 years or more	50% premium	300% premium

1.28 The proposed changes with effect from 1 April 2024 will effectively align the Council's position with a large majority of billing authorities and, in the case of premiums adopt the maximum level available within the new legislation.

³ **restricted** by a planning condition preventing occupancy for a continuous period of at least 28 days

⁴ the occupation of which is **not restricted** by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year.

Changes proposed from 1st April 2025

- 1.29 From 1 April 2025, the new legislation will allow all English billing authorities to charge a premium of up to 100% on second homes (no one's sole or main residence and which is substantially furnished).
- 1.30 The intention of the legislation change is to close the current loophole in relation of empty homes premium and also encourage the use of second homes as a primary residences.
- 1.31 **It is recommended that the Council resolves to apply a premium of 100% on second homes with effect from 1 April 2025.** The legislation requires that the authority gives at least one year's notice from the date of a full Council resolution and the change can only be effective from the commencement of a financial year, the earliest being 1 April 2025.
- 1.32 In line with the legislation, the Council must be mindful of guidance issued by the Secretary of State and any application of the premiums must take accounts of any exceptions laid down within regulation.

Exceptions from the premiums (empty homes premiums and second homes premium)

- 1.33 For information, government has released a consultation paper entitled [Consultation on proposals to exempt categories of dwellings from the council tax premiums in England](#). The consultation (which has now ended), sought views on possible categories of dwellings which should be dealt with as exceptions to the council tax premiums. It covers the empty homes premium, and also the second homes premium, provisions for which are included within the Levelling Up and Regeneration Bill.
- 1.34 The consultation proposes that there will be circumstances where either premiums will either not apply or be deferred for a defined period of time. These are as follows:
- **Properties undergoing probate** - the government proposes that these properties should be exceptions to both the second homes and empty homes premiums for 12 months. The exception would start once probate or letters of administration is granted. This does not affect the Class F exemption or the ability for billing authorities to charge the normal rate of council tax following the expiry of the Class F exemption;
 - **Properties that are being actively marketed for sale or rent** - the government proposes that this exception would apply for up to a maximum of 6 months from the date that active marketing commenced, or until the property has been sold or rented, whichever is the sooner. It will be essential that the Council will need to determine in its policy, what evidence will be required to support any exception;
 - **Empty properties undergoing major repairs - time limited to 6 months** - the government proposes that empty properties undergoing major repair works or structural alternations should be an exception to the premium for up to 6 months once the exception has been applied or when the work has been completed, whichever is the sooner. The exception could be applied at any time after the property has been empty for at least 12 months, so long as the Council is satisfied that the necessary repair work is being undertaken;

- **Annexes forming part of, or being treated as, part of the main dwelling** - the government proposes that such annexes should be an exception to the council tax premium on second homes;
- **Job related dwellings** - currently, there is a council tax discount of up to 50% for properties which are unoccupied because the owner is required to live elsewhere for employment purposes. The discount applies where the dwelling is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide dwellings for employees. The government proposes that the dwelling should also be an exception to the second homes premium. The exception will not apply to cases where someone chooses to have an additional property to be closer to work while having a family home elsewhere or where an individual is posted to a new location but maintain their previous address;
- **Occupied caravan pitches and houseboat moorings** - the government proposes that these caravans and boats should be an exception to the council tax premium on second homes; and
- **Seasonal homes where year-round or permanent occupation is prohibited or has been specified for use as holiday accommodation or prevents occupancy as a person's sole or main residence** - the government proposes that properties that have restrictions or conditions preventing occupancy for a continuous period of at least 28 days in any 12-month period, or specifies its use as a holiday let, or prevents occupancy as a person's sole or main residence, should be an exception to the second homes premium.

1.35 It is understood that regulations or guidance (which has to be followed in accordance with the Levelling Up and Regeneration Bill) will be in line with government's proposal. In view of this, the Council will need to ensure that any charging policy is in line with legislation. **It is therefore recommended that the Council's Section 151 Officer is granted delegated powers to amend the Council's policy of premiums in line with legislative or government requirements.**

2 Outcome expected and 'safety net'.

2.1 The expected outcomes of the recommendations are as follows:

- (a) Taxpayers will be encouraged, through the changes in discounts and the implementation of the premiums, to bring empty properties into use and to revert the use of second homes to primary residences;
- (b) The reduction of empty homes and second homes within the District in line with the Council's Empty Property Strategy; and
- (c) Increased Council Tax income from empty homes and second homes.

2.2 There may be circumstances where the implementation of these changes (percentage increases in the level of premiums) may cause exceptional hardship to a taxpayer. In such cases, the Council will consider applications for a reduction in liability under its Section 13A (1)(C) of the Local Government Finance Act 1992 - Reduction in Council Tax liability policy.

2.3 Where such an application is received, it will be considered on an individual case basis taking into account the circumstances of the taxpayer and the situation regarding the level of Council Tax charged. Should the taxpayer be aggrieved by

any decision of the Council a further right of appeal will be with the independent Valuation Tribunal.

3 Consultation

3.1 There is no statutory requirement to consult on any matters contained within this report. However, a resolution must be passed by full Council on or before the 31 March 2024 in order for the changes to be implemented with effect from 1 April 2024. In the case of second homes premium, a resolution made on or before 31 March 2024 will allow the premium to come into force from 1 April 2025 (its earliest commencement date).

4 Corporate plan and council policies

4.1 The recommendations in the report are in line with the following Council policies:
 (a) Corporate Plan 2022 -26 - by bringing back empty properties into use;
 (b) Sustainability Policy - by enabling communities to thrive; and
 (c) The Council's Medium Term Financial Strategy - by increasing the Council Tax Base.

5 Business case and alternative option(s) considered.

5.1 Should the Council decide not to accept the recommendations, the existing discounts and premiums will remain in place.

6 Financial appraisal

6.1 Should the recommendations be accepted; any additional income would be shared with both the Council and the major preceptors in proportion to their share of the collection fund. Based on current modelling, the increase in Council Tax is estimated to be as follows:

2024/25

	Current policy	Recommendations	Estimated income per annum
Second Homes No one's sole or main residence and which is substantially furnished. 28-day planning restriction (Class A)	0% discount	0% discount (no change)	N/A
Second Homes No one's sole or main residence and which is substantially furnished. No planning restriction (Class B)	0% discount	0% discount (no change)	N/A
Class C (Unoccupied dwelling with is substantially unfurnished)	0% discount	0% discount	N/A
Class D Structural repairs	50% discount for 12 months only	0% discount	£39k

	Current policy	Recommendations	Estimated income per annum
(Unoccupied and substantially unfurnished) (Maximum 12 months)			
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes premium) After 1 years up to 5 years of becoming empty.	50% premium	100% premium	£363k
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes premium) Dwellings empty between 5 years and up to 10 years	50% premium	200% premium	£68k
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty homes premium) Dwellings empty for 10 years or more	50% premium	300% premium	£44k

2025/26

	Current policy	Recommendations	Estimated income per annum
Second Homes Premium No one's sole or main residence and which is substantially furnished. Premium of 100% is charged in addition to the second home Council Tax charge of 100%	N/A	100% premium	£476k

6.2 It should be noted that, should the recommendations be accepted, any additional income detailed above, the Council and preceptor shares would be:

	2024/25	2025/26	% Share
Total Additional Council Tax Raised	£514,000	£990,000	
Town and Parish Councils	£27,756	£53,460	5%
Lewes District Council	£51,040	£98,307	10%
East Sussex County Council	£363,244	£699,633	71%
Sussex Police and Crime Commissioner	£48,676	£93,753	9%
East Sussex Fire and Rescue	£23,284	£44,847	5%

6.3 The award of any S13A(1)(C) (reduction in liability) is a general fund expense and would normally be met in full by the Council. In view of the fact that the additional funds from the changes in discounts and premiums proposed in this report are shared with major preceptors, it is proposed that the cost of any award are met from the collection fund.

6.4 **It is recommended that the Council's Section 151 Officer is authorised to agree with the major preceptors the funding of any award under S13A(1)(C) (reduction in liability) from the collection fund as outlined within 2.2.**

7 Legal implications

7.1 The legislation relevant to this report is as follows:

- section 11A (discounts: special provision for England) and section 11B (higher amount for long-term empty dwellings: England) of the Local Government Finance Act 1992 ('the 1992 Act');
- section 11C (higher amount for dwellings occupied periodically) of the 1992 Act (an amendment made by the Levelling-up and Regeneration Act 2023); and
- section 13A(1)(c) (reductions by billing authority) of the 1992 Act.

7.2 Where Cabinet's recommendations are accepted, a resolution is to be made by full Council. The decision needs to be published in at least one local newspaper.

7.3 Where Cabinet's recommendations are accepted, a resolution is to be made by full Council. The decision needs to be published in at least one local newspaper.

7.4 Due to the changes in the legislation, the Council will be required by statute to be mindful of any regulation and guidance issued by the Secretary of State.

Date of legal input: 31.10.23

Legal ref: 012479-JOINT-OD

8 Risk management implications

8.1 The main risk associated with the implication of the recommendations (both the changes to discounts and premiums) will be the increase in non-compliance, with some taxpayers actively trying to avoid the new charges by providing incorrect information to the Council.

8.2 The Council already has processes and procedures in place in order to ensure that **all** charges are applied correctly. Further compliance procedures will be established to ensure that the new second homes premium is applied in accordance with the legislation and the Council's requirement.

9 Equality analysis

9.1 There are no anticipated impacts on protected characteristics associated with this report. The proposals do, however, include the potential generating of positive outcomes for local people who are struggling to secure sustainable accommodation in the district/borough, and may subsequently ease current inequalities around access to local homes.

10 Environmental sustainability implications

- 10.1 The recommendations are directly in line with the Council's Sustainability Policy - by enabling communities to thrive. The recommendations are designed to bring empty homes back into use and to encourage second home owners to ensure that the dwellings are used as a primary residence.
- 10.2 The additional income from the changes to discounts and premiums will be shared, as part of the collection fund, with both the Council and the major preceptors in accordance with their share of the Council Tax.

11 Background papers

- 11.1 The background papers used in compiling this report were as follows:

[Levelling Up White Paper](#)

[Levelling Up and Regeneration Bill \(Bill 169 2022-23\)](#)

[Consultation on proposals to exempt categories of dwellings from the council tax premiums in England](#)