

Monmouthshire Select Committee Minutes

Meeting of Performance and Overview Scrutiny Committee held at The Council Chamber, County Hall, The Rhadyr, Usk, NP15 1GA with remote attendance on Monday, 27th February, 2023 at 10.00 am

Councillors Present

County Councillor Alistair Neill, (Chairman)
County Councillor Tony Kear, (Vice Chairman)

County Councillors: Jill Bond, Ian Chandler, Peter Strong, Laura Wright, Sue Riley, Phil Murphy substituting for Paul Pavia and Louise Brown substituting for Ann Webb

Also in attendance County Councillors: Rachel Garrick, Cabinet Member for Resources

Officers in Attendance

Hazel Ilett, Scrutiny Manager
Robert McGowan, Policy and Scrutiny Officer
Paul Matthews, Chief Executive
Peter Davies, Deputy Chief Executive and Chief Officer, Resources
Frances O'Brien, Chief Officer, Communities and Place
Will McLean, Chief Officer for Children and Young People
Jane Rodgers, Chief Officer for Social Care, Safeguarding and Health
Matt Phillips, Chief Officer People and Governance and Monitoring Officer
Jonathan Davies, Head of Finance
Ruth Donovan, Assistant Head of Finance
Ian Saunders, Chief Operating Officer, MonLife
Stacey Jones, Senior Accountant
Tyrone Stokes, Accountant
Nikki Wellington, Finance Manager

APOLOGIES: County Councillors Paul Pavia and Ann Webb

1. Declarations of Interest.

None.

2. Public Open Forum.

No submissions were received.

3. Pre-decision scrutiny of the Council Tax Premiums Consultation: Long Term Empty Properties and Second Homes - To consider the findings of the public consultation exercise on introducing council tax premiums from 1st April 2024 (report to follow).

Cabinet Member Rachel Garrick presented the report and answered the members' questions with Ruth Donovan and Matthew Gatehouse.

Challenge:

Can the list of exceptions be reconsidered, particularly regarding empty homes which are listed buildings, given that renovations can take a long time?

Council Tax legislation and guidance must be followed, which is specific about a 12-month allowance for properties being empty before a premium can be charged. A property exempt from council tax isn't liable for the premium. A 6-month exemption can be granted if substantial renovations are required, and that can be extended to 12 months. The exemptions can also apply to properties for sale, etc. – there is a list of other categories for exemptions.

Is it correct that those who already on the database as owning second homes voted for an increase?

It was an open, public consultation. There are 400 properties on the database classed as empty, and 190 registered as a second home. We wrote to those property owners advising that we were considering a premium and asking for their views in the consultation; we opened it up to the wider public subsequently. We therefore have a mixture of responses from those directly affected and the wider public.

The consultation was only available online?

Some without access contacted us and we took them through the consultation in the contact centres/hubs.

But if someone wasn't online, they wouldn't have known about it in the first place?

There was also a press release, so it wasn't just on the website, and we encouraged people to contact us if they couldn't complete the form online.

What is the relevance Q.s 11-15 here – are they not an infringement of privacy? Are they generic when a questionnaire is sent out?

Certain questions have to be asked in any public consultation, such as the potential impact on the Welsh language, for example, and others are good practice to be asked when policy changes are being considered, especially if there is a potential disproportionate impact on a particular group, even though they might not be legally required. And these questions are only optional.

Have colleagues in other authorities with high second homes rates found that there are means by which the legislation can be avoided?

No, we haven't seen or heard of any. Previously, it was legitimate for council tax properties to move into business rates around the thresholds for self-catering, which meant a reduction in the council tax base – other authorities reported a significant shift in this regard, as a result of the premiums. The rules around self-catering have changed since then: businesses have to be available to let commercially for at least 252 days per year (previously 140), and must be let in the previous 12 months for 182 days (previously 70 days). We anticipate a number of properties will come back into the council tax list, as a result of this threshold changing.

What counts as a 'derelict' home, and what potential is there for a long-term empty property owner to declare it derelict to avoid council tax? How do we assess that?

We would need to refer to the Revenues team for a definitive answer. For any property to be removed from a council tax list, it would have to be reviewed and assessed by the valuation office agency which advises the local authority of the council tax band or rateable value of a property – they decide if it is rated or not. If the building is derelict, it would have to meet criteria in order to be removed from a list e.g. if it were completely uninhabitable. So, the owner would need to contact the VOA and ask that the property be removed from the list.

Is there any potential to have a sliding scale in terms of second home occupancy?

That would be difficult to administer – how we would know that the property was being used every weekend, for example. We wouldn't be able to build that into our processes. We are clear that the intention is to review the impact on the local economy, in the coming year.

There are concerns about the questionnaire: the protected characteristics listed aren't in the Equality Act. Not everyone was allowed to say what the premium was – only those who said 'yes' to there being a premium were asked what the percentage should be, and there was no '0%' option.

The questionnaire is very clear and simple: if an individual has stated that they do not agree with the level of council tax, they have expressed a preference for 0%. They aren't asked to reiterate that because they don't need to.

If an elderly person has a home in one area they might need to get a small warden-assisted place somewhere else, to be near to relatives for help with their care. They might be selling their other house or they are in a warden-assisted property which is difficult to sell due to the large service charges. Should there not be exceptions in those circumstances? What about probate?

When a premium is awarded, it is down to whether there is already a council tax exemption on the property, or if it is in one of the 7 classes detailed in the guidance. In the case of someone going into a residential home, for example, if it is a permanent arrangement then there is an exemption in place for their property, under current legislation. A property is exempt for 6 months if it is empty because of probate, and can be exempted for up to 1 year because it is linked into the restriction for sale. Under the 7 classes, if the property is being marketed for sale, it is exempt for 1 year. So, there is scope in the legislation to allow for some of these circumstances.

If a property is listed and an alteration is requested before it is let, planning can take a year – is there not a danger of some of these actions falling prey to the law of unintended consequences? Do the recommendations not need a third, discretionary category? What if something is not covered by the timescales allowed for by the list of exceptions?

The discretionary category is something that we will need to consider as we go into the 12-month period before charging residents will begin (assuming it is approved now), and an entire infrastructure dealing with how this is administered will need to be created. We know from other councils already operating a premium that they have lots of contacts, questions and appeals from residents – we need to be ready for that, and learn from other councils about these sorts of queries. Guidance will then be put together for the Revenues team to follow, along with an appeals process. We therefore don't have all of the answers yet but will look to develop things in the coming months. We will reflect on what level of discretion can be applied.

Is it possible to have back-to-back exemptions?

Yes, a property can have back-to-back exemptions, for different reasons.

If the IIA is completed first – it should inform the questionnaire – so maybe questions around employed status/ income, would be more relevant. Also, if the other questions are optional, and differing numbers of respondents replied to each question, then are they helpful?

It's very important that we strive to complete the IIAs as early as possible in any process – the earlier we do so, the more likely that we can use the responses to inform the policy proposal.

There used to be an appeals panel – what happened to that?

We aren't aware of this taking place, currently, nor having done in the last 7 years. We might need to put it in place, given the level of queries once the premium is implemented.

The consultation was in fact clear that there was an option to say there shouldn't be an increase, i.e. 0%. Regarding equal opportunities, it's important to collect that data, as we want to ensure that questionnaires reach a good cross-section. The equal opportunities data showed that greatest number of respondents were over-65, so in fact the elderly were included.

Yes, it is essential that we use the equal opportunities information to ensure that we are reaching all sections of our community.

Section 12, paragraph 16 of the legal guidance states that a dwelling being occupied for one or more periods of 6 weeks or less during the year will not alter the status of a long-term empty building. This means that, for example, if an individual were in a property for 12 4-week periods, the building would still be classed as long-term empty? What is the practicality of that?

This is seen particularly in business rates: furniture, for example, is moved into an 'empty' space for a period of time, to attract an exemption from paying business rates, and this is also seen with council tax. This is a particular point that the guidance is trying to address.

But what about actual occupation of the dwelling by an individual?

It is specific guidance from Welsh Government, to address someone, for example, moving in a token piece of furniture, to try to avoid the charges.

Has there been an estimate of the exceptions that would apply to the 190 second homes? What sort of costs would there be, or have already been, such that we could see what the net financial position would be as a result of this policy?

Figures have been calculated based on the number of second homes (190) and empty properties (400) listed on our database. Currently, we don't know the extra resources that we might need to implement this. We will need to purchase an extra module on the system used for revenues and benefits. Anecdotally, other councils have had to engage extra resources within their revenues teams to deal with the numbers of correspondence and appeals. We will need to do detailed financial modelling nearer to the time to feed into the 24/25 financial plan, when we have a clearer picture of the exact number of properties and the amount of resource needed to deliver this safely.

Chair's Summary:

Areas for follow-up include exceptions that appear not to be identified currently, and the potential therefore for a discretionary class for exceptions, and for appeals to be clarified as part of the plan. Also, if there is a flaw in the Welsh Government guidance it could unwind the policy if people spotted it, leading to judicial reviews, wasting time and money – so Section 12A, paragraph 16 should be considered, as it seems to be flawed. A response outside the meeting would be welcomed – **ACTION**

4. Month 9 Budget Outturn Report - Budget monitoring report for monthly scrutiny.

Cabinet Member Rachel Garrick and Jonathan Davies presented the report and answered the members' questions with Peter Davies, Will Mclean, Frances O'Brien and Ian Saunders.

Ahead of the questions the Chair noted that it is understood that the picture is a complicated one regarding reserves and the council's underlying picture but residents will want to know what the financial position is that are identified in the report, as one which by the end of the financial year might not be financially sustainable. It would be reasonable to want to understand the

impact on the representation of our position being improved by the additional drawdown of reserves, which can't go on in perpetuity, and the impact of grants that might never be repeated.

Challenge:

Committee members should note that it is unusual to read some things in the report e.g. 3.19, which refers to the potential difficulty in reducing costs and “more extreme measures”. 3.2.0 is also very unusual in stating that measures will be “vital to ensuring that the Council ends the year in a financially sustainable position”. 3.2.1 states that certain savings “will not necessarily bring any further benefit to future years’ budget” – are we cutting out one-off issues that might result in the deterioration of services?

This wording highlights that there has been a need to strike a balance between our ability to instigate very hard measures in-year, while putting plans together for next year at the same time. The package of measures introduced in the current year has responded to a situation that has evolved very quickly. The point about financial sustainability concerns ensuring that we are instigating the necessary level of cost control now; the further deterioration at Month 9 is disappointing. We need to ensure that we are taking steps for there not to be further deterioration, putting us on a sustainable path to work through next year and beyond.

The contradiction between positive spin on one end and negative at the other is a concern, particularly as related to approaching a critical level of reserves. Do we need to examine the reserves position more closely, and the effect on budgeting in future years?

The increased use of reserves is due to examination of the intent to use capital receipts to cover some of those additional realisations of risk. It has become clear that not all of the areas that we had intended in fact qualify under the capitalisation directive and, therefore, we are having to turn to reserves on that particular piece. In terms of usage, we, as an administration, are concerned about the level of available reserves: the Council hasn't replenished them over the last few years to any discernible level, apart from the point where we had additional funding for Covid. We have the third lowest reserves in Wales. So, we are also paying extreme attention to where our reserves are, and what can be done about that.

But in terms of drawing on reserves to subsidise our revenue expenditure of £6m, £1m more than anticipated, that is separate from the capital receipts directive?

Table 3 is clear: it is a combination of items that goes towards making up the net increase of £1.06m. There's a shortfall in being able to apply all of the costs that we hoped to at Month 6 to capitalisation – it drops by approx. £500k – and there is the shortfall within the proposals that services came up with at Month 6. There are paragraphs later on about reserve levels, in terms of additional use; note the papers going to Cabinet and Council this week about the robustness of our reserve levels, and their usage for this year and next.

What would the position have been if reserves weren't drawn down, and/or if there hadn't been a one-off grant? What is the underlying picture, for us to know the Council's true position?

It is difficult to unpick, as we have received a number of one-off grants and additional income throughout the year. The bottom line is that our revenue reserves usage is increasing by £1.06m. Effectively, that item, along with the capitalisation directive, are the tools for us to meet the unexpected costs that have arisen. The point is taken, though. For a straight summary of how it has affected our outturn position, the answer is there in Table 3: there has been the increased use of revenue reserves to meet the additional costs that have come through between Month 6 and Month 9, offset by additional funding but not to the full extent. Reserves

are at a lower level than we would want, and our budgetary discipline therefore needs to be very firm – we can't rely on reserves in the medium-term to bail out the council for unforeseen overspends.

The problem is driven largely by increases in social care costs. What is the comparison with other councils? Are they experiencing similar costs pressures in this area?

We were also concerned by the increase in costs of young people's placements and curious as to how we are faring compared to other councils, with a concern that we are above-average in that area. Our Chief Financial Officer is currently working on that research and information-gathering – the headline from that is that we are around average in our expenditure in this area. It is currently affecting all councils: Wrexham, for example, has seen a 100% increase over the last 5 years in the cost of children's placements, whereas our increase has been around 50%.

Regarding the "danger of a further 9 schools going into deficit", what is our approach and what would be the impact on children's education?

We have moved from 8 to 9 schools in a deficit. Two are at a very low level (less than £10k), so we expect them to recover quickly. One school has had a substantial deficit for a period of time, but working with the Cabinet Members we are looking to provide additional support to smooth its recovery over an extended period of time. The level of the other schools is one that can be recovered over the next 2 years. We will work closely with them to ensure that they have a proper plan in place. The balances coming into the year were artificially inflated due to significant Welsh Government grants, particularly to support learners in their recovery post-pandemic, and that money had to be spent on very specific things in the timeframe. There was also the effect of the schools needing to meet the 2% pay award in-year, which was another £1m. In terms of the impact on learners, we intend to work with schools so that there isn't any – that the schools recover carefully and consider over time if there are changes to non-pay or pay-based costs that can be made to minimise any potential impact on learners.

Are we getting any indication that there will be a further call on reserves?

We think that we have reached a level of certainty now, so there shouldn't be. We received some late notification about social care grants, which we were able to put into the forecast, and gives us a level of certainty. The main concern is still the social care position moving towards the end of the year; we will continue looking at cost restraint and value for money considerations.

Is there any scope for more flexibility regarding the capital receipts being used for revenue?

Capitalisation has been used extensively in recent years, where appropriate. We hoped to use it more fully, regarding budget recovery but the feeling is that we are beyond the scope of where we should be in its utilisation. We are in frequent contact with Welsh Government and the Treasurers Association on that, and we believe we are sound in our interpretation. The table in 3.46 notes the forecast in capital receipts balances: £3m projected to the end of 26/27, so we must be mindful that the pot of capital receipts is limited. Therefore, while we could look at further flexibilities, and approach officials about additional usages, we must remember that they are one-off, and utilising them for this purpose limits the ability to draw on them for their traditional purpose to support capital expenditure and the wider capital programme. It comes back to balance, but we acknowledge the suggestion to explore flexibilities, where possible.

What's the normal percentage of the revenue budget that should be in reserves? What was it in 19/20, 20/21?

It's not entirely useful to compare where we are with 20/21, due to the additional Covid funding. We are lower than where we would like to be in those areas, at this moment. A chart in 3.31 illustrates the history of our reserve levels as a percentage of net budget over time. It's important to distinguish between council fund cover, which we have traditionally kept between 4-6%; even with the current year and budgeted use for the next financial year, it remains 4.9%. In terms of earmarked reserves, we must be mindful that they are for specific use and set up to cover certain transformational objectives and specific risks such as insurance, treasury risk, redundancies, etc. We would expect a level of usage of reserves over time for them to be drawn on for those specific purposes e.g. if we invest in service transformation, we will call on the reserves to drive efficiencies and lower long-term costs.

Given the Social Care overspend, what are the realistic prospects of turning the rising trajectory of those costs to one that sees them coming down?

As we are discussing Month 9 today, we would not go into the overall budget at this juncture.

Could you give more detail about the reduction of £424k in Highways?

That underspend is due to increased income that we are receiving for things like road closures and sustainable urban drainage. We have also received a Welsh Government flooding grant that are covering core service costs.

The Leisure budget has moved through the year from £1m to £1.4m to a forecast outturn of £1.7m – can that be further explained?

This is due to the familiar story of cost-of-living and increasing energy costs. The team has done excellent recent work on promotions to bring income back into the sites. Through this particular period there was huge uncertainty about the cost of living and energy, and issues around whether people would continue their memberships. We have been prudent in what we've suggested through the year and are very pleased with the latest upswing. Trying to predict customer numbers in this period has been very challenging.

Chair's Summary:

We recognise that these are extremely challenging positions. We have scrutinised the report and are satisfied that the responses have been made to the questions raised.

5. Performance and Overview Scrutiny Committee Forward Work Programme and Action List.

Councillor Chandler noted that there are no Month 11 or Year End budget outturns on the Forward Work Programme, asking when they will come to the committee. Jonathan Davies will check with Democratic Services and update members – **ACTION**

6. Cabinet and Council Work Planner.

7. To confirm the following minutes:

Ordinary Meeting - Performance and Overview Scrutiny Committee - 17th January 2023.

The minutes were confirmed and signed as an accurate record, but the Chair noted a correction: the statement that numerous councils across the country are in bankruptcy because of the current economic crisis is inaccurate – there is one bankrupt council but that is due to

poor long-term investments. The Chair reminded Cabinet Members and officers that such matters must not be misrepresented, or committee members and the public misinformed.

Special Meeting - Performance and Overview Scrutiny Committee - 25th January 2023.

The minutes were confirmed and signed as an accurate record.

8. Next Meeting: Thursday 27th April 2023 at 10.00am.

The meeting ended at **12.01 pm**