

I refer to the agenda for the special meeting of the Policy & Resources Committee to be held on Thursday 24 June 2021 at 3pm and attach a report as undernoted which was not available on the day of issue.

ANNE SINCLAIR
Interim Head of Legal Services

UNDERNOTE

2. **Council Tax Appeal – Decision of the Valuation Appeals Committee**
Report by Interim Service Director, Corporate Services and Organisational Recovery providing an update on the outcome of the decision of the Valuation Appeals Committee.

The documentation relative to the following item has been treated as exempt information in terms of the Local Government (Scotland) Act 1973 as amended, the nature of the exempt information being that set out in paragraphs 6 and 12 of Part I of Schedule 7(A) of the Act.

- 2(a). **Appendix to the report providing legally privileged information.**

Report To:	Policy & Resources Committee	Date:	24 June, 2021
Report By:	Interim Service Director, Corporate Services and Organisational Recovery	Report No:	FIN/34/21/AP/LA
Contact Officer:	Alan Puckrin	Contact No:	01475 712223
Subject:	Council Tax Appeals - Decision of the Valuation Appeals Committee		

1.0 PURPOSE

1.1 The purpose of this report is to update the Committee of the outcome of two appeals considered by the Valuation Appeals Committee (VAC) in respect of properties owned by a landlord within the Clune Park Estate.

2.0 SUMMARY

2.1 On the 23 February, 2021 the Head of Legal & Property Services reported to a special meeting of the Policy & Resources Committee the outcome of an officer led internal review in respect of a specific appeal by a landlord regarding the application of the LTE levy in relation to a number of properties within the Clune Park Estate. The review had been undertaken by officers from Legal Services, Finance Services and Public Protection supported by external legal advice.

2.2 Following consideration of the report, the Committee agreed that the terms of the internal review and that the Officers interpretation and implementation of the Long-Term Empty Property and Second Homes policy for certain properties as set out in the internal review be upheld. Separately the Committee agreed that the effectiveness of the Long-Term Empty Property and Second Homes policy be reviewed at a future meeting of the Committee following appropriate and full public consultation

2.3 The Renfrewshire Joint Valuation Appeal Committee heard two Council Tax appeals by the same landlord on 20 May, 2021 in respect of the following :

- An appeal against the decision of the Council not to award a Council Tax exemption in respect of 25 of the properties in the Clune Park Estate (" the Council Tax Exemption Appeal ")
- The Council Tax Long Term Empty (LTE) Levy appeal in respect of the above properties.

2.4 In a written judgement dated 25 May, 2021 the VAC refused the appeal in respect of Council Tax Exemption, thus finding in favour of the Council, but upheld the appeal by the landlord in respect of the LTE Levy. Legal advice in respect of any appeal is contained in the private appendix.

2.5 The report outlines the next steps and potential financial implications whilst also providing a timescale for the reporting of the review and public consultation regarding the existing Council Tax- LTE and Second Homes Policy.

2.6 Whilst not within the remit of this Committee there will undoubtedly be questions regarding the impact the VAC decision will have on the strategy for Clune Park. It would be the intention of officers to provide a comprehensive update on this matter to the 26 August 2021 meeting of the Environment & Regeneration Committee.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee notes the outcome of the two appeals to the VAC in respect of certain properties in the Clune Park Estate and, after considering the contents of the private appendix, approves the recommendation of Officers not to appeal to the Inner House of the Court of Session in respect of decision regarding the LTE levy.
- 3.2 It is recommended that the Committee note that, on the basis the Committee decides not to appeal then officers will proceed with the following:
 - a) The LTE levy for the properties within the Clune Park Estate owned by the successful appellant would be cancelled and the Council Tax bills for the relevant years/properties reissued.
 - b) Any LTE levy billed in respect of properties not held by the Council within the Clune Park Estate should be cancelled and Council Tax bills for the relevant years reissued.
 - c) Where the Council currently owns a property within Clune Park then officers should review the application of any LTE levy recovered from former owners when the Council acquired properties and report back to the Committee with recommendations for consideration
- 3.3 It is recommended that the Committee note the timescales for the reporting and review of the current Council Tax LTE Policy.
- 3.4 It is recommended that the Committee note that an update report on the future strategy for Clune Park will be presented to the August meeting of the Environment & Regeneration Committee.

Alan Puckrin
Interim Service Director, Corporate Services and Organisational Recovery

4.0 BACKGROUND

- 4.1 Since the 1 April, 2016 the Council has added a Long Term Empty (LTE) levy to Council Tax charges as allowed under The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013. In 2016/17 and 2017/18 the levy was set by the Council at 30% , increasing to 50% for 2018/19 and since 1 April, 2019 the LTE levy within Inverclyde has been 100% , in line with the vast majority of Scottish Councils.
- 4.2 The Council last reviewed and approved the Council Tax- Long Term Empty & Second Homes Policy in February, 2019. The approved Policy is administered by officers within the Finance Service with any appeals considered initially by the Revenues & Benefits Manager and thereafter the Valuation Appeal Committee (VAC) of Renfrewshire Valuation Joint Board.
- 4.3 On the 23 February, 2021 the Head of Legal & Property Services reported to a special meeting of the Policy & Resources Committee the outcome of an officer led internal review in respect of a specific appeal by a Landlord regarding the application of the LTE levy against a number of properties within the Clune Park Estate. The Council, via their external legal representatives, offered to carry out an internal review as part of discussions at a Preliminary Hearing in respect of a request for a Judicial Review by the same landlord within the Clune Park Estate.
- 4.4 Following consideration, the Committee agreed that the terms of the internal review and the written submissions from the property owners be noted and that the Officers interpretation and implementation of the Long-Term Empty Property and Second Homes policy for certain properties as set out in the internal review be upheld. Separately the Committee agreed that the effectiveness of the Long-Term Empty Property and Second Homes policy be reviewed at a future meeting of the Committee following appropriate and full public consultation.
- 4.5 The Renfrewshire Joint Valuation Appeal Committee heard two Council Tax appeals by the same landlord on 20 May, 2021 in respect of the following :
 - An appeal against the decision of the Council not to award a Council Tax exemption in respect of 25 of the properties in the Clune Park Estate (" the Council Tax Exemption Appeal ")
 - The Council Tax Long Term Empty (LTE) Levy appeal in respect of the above properties.

5.0 LATEST POSITION

- 5.1 In a written judgement dated 25 May, 2021 the VAC has refused the appeal in respect of Council Tax Exemption, thus finding in favour of the Council, but upheld the appeal by the landlord in respect of the LTE Levy. Any appeal in respect of the decision of the VAC requires to be made to the Inner House of the Court of Session within a period of 42 days of intimation of the decision and therefore no later than 6 July, 2021.
- 5.2 Officers have had further discussion with the Senior Counsel and Council's external Legal Advisers representing the Council and following this and after considering the detail in the private appendix the recommendation from officers is that the Council should not appeal the decision of the VAC in respect of the LTE levy in respect of the landlord within the Clune Park Estate.
- 5.3 It is clearly a matter for the Appellant as to whether they wish to appeal against the VAC decision in respect of the requirement to pay Council Tax and this will be known by mid-July.

- 5.4 Were Committee to support the officer recommendation not to appeal the VAC decision regarding the LTE then officers would propose the following actions:
- a) The LTE levy for the properties within the Clune Park Estate owned by the successful appellant would be cancelled and the Council Tax bills for the relevant years/properties reissued.
 - b) Any LTE levy billed in respect of properties not held by the Council within the Clune Park Estate should be cancelled and Council Tax bills for the relevant years reissued.
 - c) Where the Council currently owns a property within the Clune Park Estate then officers should review the treatment of any LTE levy recovered from former owners when the Council acquired properties and report back to the Committee with recommendations for consideration.
- 5.5 Officers are progressing the decision of the 23 February Policy & Resources Committee in respect of a review of the effectiveness of the LTE Policy and a report back to Committee following appropriate and full public consultation. The current timescales for delivery of the actions are as follows:
- Commence Consultation - Early July
 - Consultation Closes -30 July
 - Analyse Results – August
 - Report to Policy & Resources Committee – 14 September

This leaves sufficient time for officers to provide further reports should they be asked to develop a revised Policy for Committee to consider as part of the 2022/23 Budget.

- 5.6 Whilst not within the remit of this Committee there will be understandable questions regarding the impact the VAC decision will have on the strategy for Clune Park. It would be the intention of officers to provide a comprehensive update on this matter to the 26 August meeting of the Environment & Regeneration Committee.

6.0 IMPLICATIONS

6.1 Finance

The VAC decision, if not appealed, will require as a minimum the cancellation of the LTE levy for the properties subject to the appeal. The financial issues arising from this are contained in the Appendix.

Overall, depending on any future decisions arising from the report referred to in 5.4 above then the worst case scenario is that the net cost of cancelling all LTE levy debt within the Clune Park Estate for the 6 year period is around £355,000 and whilst only around £120,000 has been collected, the prudent action from officers would be to adjust the Council's 2020/21 Annual Accounts to reduce the outstanding Council Tax debt after taking into account existing bad debt provisions.

Committee should note that there remain considerable Council Tax debts in relation to many of the owners/landlords within Clune Park and, as is the case with this appellant, these debts exceed the District Valuer value of the properties. This highlights the extent of the challenges faced by the Council in both collecting the sums due and progressing the Clune Park Strategy.

The external legal costs associated with the VAC appeals and Judicial Review currently total £54,500 (£16,500 Judicial Review/ £38,000 VAC). Final bills are expected from the Council's representatives and the issue of liability for expenses relating to the Judicial Review has to be determined. Remaining legal costs will require to be contained within the Finance & Legal revenue budgets in 2021/22.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
Council Tax	Council Tax	2020/21	£355k		Worst case scenario provision within the 20/21 accounts for the cancellation of all Clune Park LTE debt for 2016/22
Finance	Legal costs	2019/22	Approx £80k		Estimated maximum legal costs associated with this action

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

6.2 Legal

The Legal issues are set out within this report and the attached private Appendix.

6.3 Human Resources

There are no HR implications arising from this report.

6.4 Equalities

Equalities

- (a) Has an Equality Impact Assessment been carried out?

	YES (see attached appendix)
x	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

- (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
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x	NO
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(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
x	NO

6.5 Repopulation

There are no repopulation implications arising from this report.

7.0 CONSULTATIONS

7.1 The Interim Head of Legal Services and Interim Service Director Environment & Economic Recovery have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

8.1 23 February 2021 Policy & Resources report (Private)