

## ISLE OF ANGLESEY COUNTY COUNCIL

REPORT TO:	EXECUTIVE COMMITTEE
DATE:	19 OCTOBER 2015
SUBJECT:	BRYN TREWAN ESTATE, CAERGEILIOG - SEWAGE CHARGES FOR YEARS PRIOR TO 2015/16
PORTFOLIO HOLDER(S):	COUNCILLOR HYWEL EIFION JONES
HEAD OF SERVICE:	RICHARD MICKLEWRIGHT, INTERIM SECTION 151 OFFICER AND HEAD OF FUNCTION (RESOURCES)
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LOCAL MEMBERS:	COUNCILLOR RICHARD A. DEW COUNCILLOR GWILYM O. JONES

### A - Recommendation/s and reason/s

#### Recommendations

- The Executive notes the Interim Section 151 Officer's decision that the actual sewage charge cost to the Council for 2014/15 from the MoD's agent (£15,073.92) is recharged and recovered in full from the property owners of the 58 relevant properties at Bryn Trewan, Caergeiliog during 2015/16;
- The Executive further notes the Interim Section 151 Officer's decision that the Consumer Price Index is used to measure the official rate of inflation when calculating the annual increase in the recharge to each property owner, comparing this to the actual charge from the MoD's agent. The greater of the two shall be the recharge;
- As some property owners have been continuously recharged and have paid throughout the period, others have been invoiced and paid inconsistently during the same period and some property owners not been charged at all – the Executive is asked to decide from the options listed in Part B of this report, how in terms of consistency and fairness such unbilled or outstanding sewage recharge debts for years prior to 2015/16 are now to be treated. The option favoured by officers is Option 1.
- It is recommended that any outstanding or recharges not billed **older** than 6 years old (i.e. prior to April 2009) are, if unpaid, written off in accordance with Financial Procedure Rules and for those not yet billed no recharge invoices to property owners are issued. The figure calculated for not billed periods **older** than 6 years old, is also written off in accordance with Financial Procedure Rules (Total value bills not raised **older** than 6 years £21,276.12, outstanding **older** than 6 years £435.00).

#### Background

Almost a year ago, pre-legal notices were issued to a number of residents/property owners in Bryn Trewan and Minffordd Road, Caergeiliog regarding outstanding sewage charges. Following representations from residents/property owners and considerable media interest, it was agreed that no further recovery action on these notices would be undertaken pending a full investigation being carried out by the Council. The Council's Audit Committee on 7 November 2014 also requested that Internal Audit reviewed the original documentation in relation to the re-charge of sewage costs with regard to the 58 properties concerned.

## Findings

- The contract the Council has with the Ministry of Defence (MoD) dated 21 February 1992, enables the Council to use the MoD's sewage processing plant to permit the discharge of sewage and receive and treat such sewage at an expense, to the Council at the time, of £5,491.34 per annum, subject to annual increases at the MoD's discretion and subject to a limit of 8,000 gallons per day in relation to 60 properties at Bryn Trewan (4 properties were later converted and sold as 2 properties). This contract establishes the Council's liability to pay the charges for the sewage processing plant, with regard to these properties;
- Transfer of ownership documents from the Council to new owners include a clear new owner liability to pay the Council, for service recharges relating to sewage in contract clauses;
- This annual recharge to the new owners was to be increased annually by the Council in accordance with the official rate of inflation or equivalent to the charge paid by the Council to the MoD, whichever was the greater;
- The Council was to raise two half yearly bills for the owners to pay on 1 July and 1 January each year;
- 21 properties owned by a social landlord have been recharged continuously from the original date (February 1992) of transfer of ownership from the Council, but the annual increase has not applied. The non-application of annual increases in line with the contract terms has meant there has been an undercharge to the social landlord. The total in this respect is £18,259.37 ( the difference between the amount actually raised of £84,461.52 and that which should have been raised of £102,720.89);
- The social landlord has paid the Council over the years £80,821.52 with £3,938.74 outstanding at present;
- 12 of the remaining 37 private properties have been continuously recharged from the date of transfer up to 30 June 2014, but the annual increase was not applied. From the 25 of the remaining 37 private properties, only 2 have been recharged continuously from the date of transfer and 1 not recharged at any time. It is estimated that the non-application of annual increases in line with the contract terms and failure to recharge has meant there has been an undercharge to the owners of the private properties of £36,816.20 (the difference between the amount actually raised £100,129.72 and that which should have been raised of £136,945.92);
- Private owners over the years have paid approximately £95,697.54 with £4,432.18 outstanding at present;
- Should such increases, allowed within the contract have been applied to the recharges made by the MoD's agent to the Council, the actual increase from the charge made in 1992 (£5,491.34) to the latest charge in April 2015 (for 2014 – 2015 (£15,073.92) represents an overall increase of 174.5%;
- The actual annual recharge to the social landlord for 20 properties has been at a rate of £182 per annum with one property being recharged £199.16 per annum. No annual increase has been applied;
- The actual annual recharge to property owners for 36 properties is at an annual rate of £174 per annum and one property being recharged at £199.16 per annum. Again no annual increase has been applied.
- The recharge during 2015/16, with regard to charges incurred by the Council for 2014/15 is £259.89 per annum for each of the 58 properties.

**B - What other options did you consider and why did you reject them and/or opt for this option?**

**Option 1 – a fresh start (accepting what has happened and moving on)**

From 2015/16 onwards recharge the owners of the 58 properties in accordance with the terms of contract clauses i.e. actual charge or increase by inflation, which ever is the greater based on the previous year's actual charge.

For previous years, 2014/15 and previous (**up to six years**) –

- For those who have been billed and paid, no amended bills are sent for annual increases and no refunds for payments made;
- For those who have been billed and have unpaid balances, no amended bills are sent for annual increases and unpaid balances are written off;
- For those who have not received a bill, no bills are issued but value of unraised bills written off.

The value of the lost income will be £33,799.45 i.e. from not applying the annual charges increases and where bills were not raised in the last six years. The value of bills to be written off £7,935.92.

This Option 1 accepts what has happened and confirms that some property owners have been billed and paid, others billed and paid occasionally and others not billed at all. Any outstanding balances are not pursued. The current situation is accepted but from 2015/16 matters are put right.

Disadvantage of this option is that some owners will have paid what has been recharged whilst others have not and may not be happy that those who have not paid or been billed are treated more favourably. The income to Housing Services is also not being maximised. The value of these payments up to a period of six years is £41,390.84.

**Option 2 – a complete fresh start (reversing all that has previously happened)**

From 2015/16 onwards recharge the owners of the 58 properties in accordance with the terms of contract clauses i.e. actual charge or increase by inflation, which ever is the greater based on the previous year's actual charge.

For previous years, 2014/15 and previous (up to six years) –

- For those who have been billed and paid, no amended bills are sent for annual increases and refund payments made;
- For those who have been billed and have unpaid balances, no amended bills are sent for annual increases, refund payment made and unpaid balances are written off;
- For those who have not received a bill, no bills are issued but value of unraised bills written off.

This means the writing off of debts for 2014/15 and previous (up to six years) for raised and non raised bills with a value of £91,692.10 and to replay owners £41,390.84 with regard to payments made.

This Option 2 addresses the disadvantages of Option1 deciding that prior to 2015/16 (for a period of up to 6 yeras) as matters were not dealt with correctly the "slate is wiped clean" and from 2015/16 onwards recharges are made to all property owners based on contracts terms.

This will mean that all income collected in previous years (for a period up to 6 years) will be refunded and bills cancelled as incorrectly raised with the Council deciding not to recharge for years prior to 2015/16 (for up to 6 years). This will mean a considerable loss of income to Housing Services.

**Option 3 – raise bills in accordance with contracts (correcting what has happened to what should have happened)**

From 2015/16 onwards recharge the owners of the 58 properties in accordance with the terms of contract clauses i.e. actual charge or increase by inflation, whichever is the greater based on the previous year's actual charge.

For previous years, 2014/15 and previous (up to six years) –

- For those who have been billed and paid, amended bills are sent for annual increases;
- For those who have been billed and have unpaid balances, amended bills are sent for annual increases, no refund of payments made and no write off of unpaid balances;
- For those who have not received a bill, bills are issued in accordance with contracts i.e. increased annually by inflation or actual charge, whichever is the greatest.

This Option 3 again addresses the disadvantages of Option1 but deciding to bill every property owner in accordance with contract terms. Amended annual bills are issued, outstanding debt is pursued and no refunds being made. The Council will be acting in accordance with the terms of the contracts and additional income to Housing Services will be generated.

This means that amended bills for 2014/15 and before this (up to six years) will have to be raised on the owners having a value of £33,799.45 and recovery action would have to be taken to recover the outstanding debt less than 6 years old of £7,935.92.

It is likely that property owners will challenge such an approach involving the media, local and national members as well as the Ombudsman or instruct their own legal representatives. This will bring adverse publicity on the Council. It should be remembered it is the Council that has failed to recharge in accordance with contracts.

**Option 4 – raise bills based on previous practice (treating everybody in the same way to what was done)**

From 2015/16 onwards recharge the owners of the 58 properties in accordance with the terms of contract clauses i.e. actual charge or increase by inflation, whichever is the highest based on the previous year's actual charge.

For previous years, 2014/15 and previous (up to six years) –

- For those who have been billed and paid, no amended bills are sent for annual increases;
- For those who have been billed and have unpaid balances, no amended bills are sent for annual increases;
- For those who have not received a bill, bills are issued in accordance with recharge figure shown on their contract at the time and no annual increase applied.

This would for, 2014/15 and before (up to six years) mean raising bills with a value of £12,727.16.

This Option 4 again addresses the disadvantages of Option1 but deciding to bill every property owner in the same way as those property owners who have been previously billed i.e. not applying the annual increases. Amended annual bills are issued, outstanding debt is pursued and no refunds being made. However, the Council will not be acting in accordance with the terms of the contracts. Additional income to Housing Services will be generated.

It is likely that property owners will challenge such an approach involving the media, local and national members as well as the Ombudsman or instruct their own legal representatives. This will bring adverse publicity on the Council. Again, it should be remembered it is the Council that has failed to recharge in accordance with contracts.

#### **C - Why is this a decision for the Executive?**

The Financial Procedure Rules of this Council state that the collection of all money due to the Council shall be under the supervision of the Head of Function (Resources) / S151 Officer.

With regard to the recharge of sewage costs at Bryn Trewan, the matter has been referred to the Executive, having regard to the previous property residents/owners representations following attempts to recover the outstanding debt, local and national member involvement along with local and national media interest and also the fact that the Council has not recharged costs in accordance with contracts – any decision on the way forward to resolve this issue may directly adversely impact on the Council's reputation.

#### **CH - Is this decision consistent with policy approved by the full Council?**

The Financial Procedure Rules of the Council require the prompt rendering of invoices for the recovery of income due. The Head of Function (Resources) / S151 Officer shall be notified promptly in writing of all money due to the Council and of contracts, leases and other agreements and arrangements entered into which involve the receipt of money by the Council.

Financial Procedure Rules go on to state that no debit in respect of an amount due to the Council, once established, shall be discharged except by payment, by the issue of an official credit note or by a write-off approved by the Head of Function (Resources) / S151 Officer as provided in the Accounts and Audit Regulations 1996 and the Executive. The Executive may from time to time specify a sum below which individual amounts may be written off on the authority of the Head of Function (Resources) / S151 Officer alone.

#### **D - Is this decision within the budget approved by the Council?**

This is dependant on what option is preferred by the Executive –

- **Option 1** – Housing Services income budget with regard to recharges has been based on previous years' experience of the amount recharged. The decision from 2015/16 onwards to recharge in accordance with contracts will increase income;
- **Option 2** – no budget exists within Housing Services to refund all payments made prior to 2015/16 (for up to 6 years). The Executive may consider funding this from a central contingency if this option is chosen;
- **Option 3** - Housing Services income budget with regard to recharges has been based on previous years' experience of the amount recharged. The decision from 2015/16 onwards and for previous years (up to six years) to recharge in accordance with contracts will increase income;

- **Option 4** - Housing Services income budget with regard to recharges has been based on previous years' experience of the amount recharged. The decision from 2015/16 onwards to recharge in accordance with contracts and for previous years (up to six years) to recharge in accordance with the original figure shown on the contract (i.e. not apply annual increases) will increase income.

**DD - Who did you consult?**

**What did they say?**

	<b>Who did you consult?</b>	<b>What did they say?</b>
1	<b>Chief Executive / Strategic Leadership Team (SLT) (mandatory)</b>	
2	<b>Finance / Section 151 (mandatory)</b>	Author of report
3	<b>Legal / Monitoring Officer (mandatory)</b>	
4	<b>Human Resources (HR)</b>	
5	<b>Property</b>	
6	<b>Information Communication Technology (ICT)</b>	
7	<b>Scrutiny</b>	
8	<b>Local Members</b>	
9	<b>Any external bodies / other/s</b>	

**E - Risks and any mitigation (if relevant)**

1	<b>Economic</b>	
2	<b>Anti-poverty</b>	
3	<b>Crime and Disorder</b>	
4	<b>Environmental</b>	
5	<b>Equalities</b>	
6	<b>Outcome Agreements</b>	
7	<b>Other</b>	

**F - Appendices:**

No Appendices.

**FF - Background papers (please contact the author of the Report for any further information):**

Internal Audit Service Final Report 6 May 2015 1993.14/15 Bryn Trewan Debt Position