

Committee	COMMUNITIES SCRUTINY COMMITTEE
Date	27 October 2022
Title	National and local developments to manage the effect of second homes and holiday lets on the ability of local people to gain access to housing in their communities and the New Local Development Plan.
Cabinet Member	Councillor Dafydd Meurig
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Purpose	To raise the Committee's awareness about the legislative and national planning policy changes that are in the pipeline.

1. BACKGROUND

- 1.1 During winter 2021/22, the Welsh Government carried out a public consultation linked to amendments to legislation and planning policy in relation to second homes and short-term holiday lets. A response was prepared and submitted by Gwynedd Council to the consultation, which generally welcomed the changes and the wider objective to be delivered; however, concern was expressed regarding the practicality of implementing the intended changes. Confirmation has now been received in a letter (see Appendix 1) that the changes to national legislation and planning policy will come into force on 20 October 2022.
- 1.2 In light of this announcement and the changes to planning legislation, all Local Planning Authorities in Wales have the choice to use new powers through the planning system that enable management of the use of houses for the purpose of second homes and holiday lets. Previously, the ability of Local Planning Authorities to restrict the use of dwellings as holiday homes (holiday lets and second homes) through the planning system has been extremely limited.

2. PURPOSE:

- 2.1 This paper is presented in order to provide an overview of the legislative changes to the planning system and national planning policy, and the work that is progressing to respond to these changes. The wider objective of the changes and the new powers is to seek better management of the use made of dwellings as second homes and holiday lets and, in doing so, ensure that there is an affordable provision of dwellings that meet the needs of local communities.

3.0 OVERVIEW OF THE CHANGES AND IMPLICATIONS

Proposal

- 3.1 In accordance with previous planning legislation (Town and Country Planning Order (Use Classes) 1987 (as amended)), a residential dwelling used as a primary residence, a second home or holiday let was defined as use class C3 'Dwelling House'. In general, this means that it is possible to use the dwelling house for these mixed uses (namely, second home and holiday let) without having to receive planning permission, unless it is concluded that a change of material use has taken place (such legal cases were rare).
- 3.2 Changes to planning legislation, which will be implemented from 20 October 2022 include:
- Amending the Town and Country Planning (Use Classes) Order 1987¹ to create three new use classes for Primary Residences, Second Homes and Short-term Holiday Lets.
 - Amend the Town and Country Planning (Permitted General Development) Order 1995 in order to allow changes between the three new use classes (Primary Residences, Second Homes and Short-term Holiday Lets) without the need for planning permission.
 - Amend Planning Policy Wales to make it clear, when relevant, that the number of second homes and short-term holiday lets in a local area must be considered when considering the housing requirements and policies in Local Development Plans (LDPs).
- 3.3 Dwelling houses, depending on the use made of them when the legislative changes are announced, will be defined in accordance with the new relevant use class category. For example, a dwelling house that is the primary residence for an individual will be defined as C3 use (Primary Residence), a property used as a second home will be defined as C5 use (Second Home) and a property used as short-term holiday let will be defined as C6 use (Holiday Let).
- 3.4 Owners will have the right to change the use of a dwelling house from one of the new use classes (C3, C5 and C6) to another use class, without having to request planning permission, as the amendment to planning legislation would allow this. New planning applications for main residences/second homes/short-term holiday lets will receive planning permission for the relevant use class.
- 3.5 If it is deemed appropriate, in order to restrict the change of use between the new use classes, the Local Planning Authority has the power to introduce what is called an **Article 4 Direction** for a specific area. An Article 4 Direction (depending on its content and scope) would remove the rights to change between the use classes without planning permission. It is possible to implement the Article 4 Direction for a specific area (no definition noted in legislation), provided that it is possible for Local Authorities to evidence appropriately that second homes and short-term holiday lets are having a detrimental impact on areas and communities.
- 3.6 It is emphasised that issuing an Article 4 Direction does not prevent development but rather, it means that planning permission must be sought from the Local Planning Authority for the proposal. By enforcing the need to receive planning permission, it means that consideration is needed to the impacts of the development and to its compliance with the local and national

¹[Town and Country Planning \(Use Classes\) Order 1987 \(as amended\)](#)

planning policy context. Therefore, this is how changes in planning legislation should help with having better management of second homes and short-term holiday lets.

The procedure for implementing an Article 4 Direction

- 3.7 Legal processes must be followed in order to issue and implement an Article 4 Direction. The procedure is outlined in the Town and Country Planning (Permitted General Development) Act 1995 as amended. In accordance with the latest amendment to the relevant legislation, it is possible to issue two types of Article 4 Directions, namely:
- a Direction with immediate effect, which means that the Article 4 Direction comes into force before a public consultation.
 - a Direction without immediate effect, which means that a public consultation is held before the Article 4 Direction comes into force.
- 3.8 In accordance with the Government's guidance, Local Planning Authorities should only consider issuing Article 4 Directions in exceptional circumstances. In this case, it will be required to evidence that allowing Primary Residences to change to Second Homes and/or Short-term Holiday Lets without planning permission, will have a detrimental impact on local amenities, community well-being or on the process of planning the area appropriately.
- 3.9 The process of preparing and receiving approval to the Article 4 Direction, whichever path is followed (direct/indirect), involves the need to:
- Prepare a report with appropriate evidence that justifies the decision in relation to issuing the Article 4 Direction;
 - Prepare the Article 4 Direction (legal document);
 - Hold a public consultation on the Direction, contacting those specifically affected by the Direction;
 - Consider the observations received during the public consultation period;
 - Confirming the Direction - Local Planning Authority.
- 3.10 It is considered that advantages and disadvantages are associated with both paths that need careful consideration. It is emphasised that the letter (Appendix 1) confirming the implementation of the legislative and national planning policy changes received from the Government (28 September 2022) includes a specific reference to circumstances where compensation may be payable by the Local Authority. **The letter states that a 12 month notice period is required prior to the implementation of an Article 4 direction, if compensation is not to be paid.** It is emphasised that it was unclear in the public consultation undertaken by the Welsh Government (November 2021 - February 2022) that the compensation provisions would be relevant, nor the need for a 12 month notice period prior to the implementation of an Article 4 direction, if compensation is not to be paid.
- 3.11 Given the potential risks of compensation claims the Council may have to pay, the Council must ensure that there is a 12 month notice period prior to the implementation of an Article 4 Direction, in order to protect the interests of the Council. In light of this, the Council has

been restricted to a large extent to follow the "direction without immediate effect" path, which will then include a 12 month notice period before the Article 4 Direction is implemented. By following this system, it would avoid the risks for the Council of having to pay compensation.

Matters to be considered

3.12 As the process of issuing an Article 4 Direction to manage this type of use is unprecedented, it is difficult to anticipate and predict the potential implications. It is anticipated that some of the opportunities associated with issuing an Article 4 Direction would include:

- Due to the research work published by the Planning Policy Service in 2020 "Managing the use of dwellings as holiday homes", the Council has a strong starting point for the work required in order to evidence the area(s) where an Article 4 Direction could be justified.
- Power of implementation in the hands of Local Planning Authorities;
- Possible to tailor the response in accordance with local circumstances and requirements - respond to the needs of a specific area;
- Possible to tailor the terms of the Article 4 Direction and the 'Permitted Development Rights' that are abolished;
- Opportunity to manage the use made of new houses and to restrict the transfer between uses of existing houses;
- Opportunity to try to reverse the side effects of second homes and short-term holiday lets on communities and to ensure fairness and opportunities for Gwynedd residents;
- The amendment to Planning Policy Wales, which also comes into force on 20 October 2022, will update the planning policy context to meet the changes in legislation, which will be useful for the Council to use on a local level;
- Opportunity to develop planning policies that will deal directly with the three new use classes (Primary Residences changing to Second Homes and/or to Short-term Holiday Lets) as part of the process of preparing the New Gwynedd Local Development Plan.

3.13 Amongst some of the restrictions or limitations associated with issuing an Article 4 Direction are:

- Implications for all residential dwellings where an Article 4 area has been implemented, which will potentially impact the value of the properties in question;
- Impact on the housing market where an Article 4 Direction is not implemented, additional pressures;
- Possibility that the adjacent Authority's implementation path could have an (unintentional) impact on the housing market;
- Possibility that the current local planning policy framework will not fully reflect any restrictions that would be set by issuing an Article 4 Direction, and that a new planning policy would not be in place until a New Local Development Plan has been adopted.
- No planning fee associated with an application that would be permitted development rights if the Article 4 Direction was not in force;

- Additional resources would be required to go through the steps of issuing and implementing an Article 4 Direction and especially for its implementation at grass roots' level, and recruiting qualified planners is already challenging.

4. THE CURRENT SITUATION

- 4.1 The work of preparing a report in order to evidence and justify the implementation and issue of an Article 4 Direction for Gwynedd/area of Gwynedd is ongoing. A detailed work programme has been prepared, which highlights the steps and associated timetable (appendix 2) and incorporates the 12-month notice period before the Article 4 direction is implemented.
- 4.2 The work that has been carried out includes reviewing and updating the evidence in the "Managing the use of dwellings as holiday homes" research work, to better understand the current situation in terms of numbers and the potential side effects across the county. Of course, consideration will also be given to all other interventions that will be introduced in terms of taxation and licensing, before examining the options of potential areas for an Article 4 direction.
- 4.3 Therefore, in terms of the timetable / programme in appendix 2, we are currently in Step 1 of the process with this work mainly being carried out in-house by Council officers, in consultation with officers from the Snowdonia National Park Authority.
- 4.4 It must be emphasised that it is extremely important that we have robust evidence in place and that we follow the procedure noted in legislation in order to reduce any risks of legal challenges to the Council.
- 4.5 The Welsh Government has recognised that there are additional pressures on Authorities in association with issuing and implementing an Article 4 Direction and, as a result, the Council has requested additional resources from them. An application was submitted for additional resources to the Welsh Government on 12 September 2022. This application included the costs of legal guidance from a Counsel, and the costs of additional planning officers to implement the Article 4 Direction. To date, no response has been received from the Government.
- 4.6 The issues that have been considered in light of the changes to the planning legislation, have gone beyond issues that are relevant to an Article direction. Careful consideration has been given to how the change in legislation can be used from 20 October 2022, to deal with new planning applications for housing developments. It is believed that introducing the new use classes has a direct impact on how authorities should deal with planning applications for new housing, especially as new housing developments are expected to meet the housing needs of the area and for main residential dwellings (not for second homes and short-term holiday lets). Therefore, on a case-by-case basis, with planning applications for new housing (namely, Primary Residences) we will consider using a planning condition that will abolish the right to move from a primary residence to a second home and/or short-term holiday let.

5. DWYFOR PILOT SCHEME

- 5.1 Following the Welsh Government's commitment to introduce various steps to address the impacts a high number of second homes and short-term holiday lets may have on communities, it was confirmed in November 2021 that the Dwyfor area had been chosen by the Government as a pilot area in order to trial some of the potential interventions. Dwyfor was selected as a pilot area due to its geographical size, the concentration of communities with second homes and due to its importance to the Welsh language.
- 5.2 In relation to changes to planning legislation and policy, the Government has committed to support the Council with the work of justifying and implementing an Article 4 Direction for the Pilot Area.
- 5.3 Furthermore, it is intended to put other actions (that are beyond the Planning system) in place in the pilot area, which include:
- support in terms of provision of affordable houses in the area by collaborating with various partners including Gwynedd Council, Snowdonia National Park, Grŵp Cynefin, town councils and Dwyfor communities.
 - extending the Homebuy Scheme, with £8.5 million earmarked by the Government for this Scheme in the Pilot Area;
 - Bringing empty homes back into use. £1 million has been contributed by the Government to the Council in order to bring empty residential units back into use;
 - Examine the provision and cost of private rented housing;
 - Support community initiatives/affordable housing.
- 5.4 In order to coordinate these actions, the Government has funded two specific Officers to work in the pilot area for a period of two years.
- 5.5 It is noted above that the Government is committed to support the process of issuing and implementing an Article 4 Direction in the Area of the Pilot Scheme should the Council decide to follow this path. It is emphasised that implementing an Article 4 Direction would not be undertaken based on a pilot/trialling and that there would be a long-term commitment to the intervention. Furthermore, issuing an Article 4 Direction is based on receiving robust evidence in order to support it, therefore, other areas of Gwynedd where it would be appropriate (possibly) to issue a Direction cannot be disregarded. Similarly, it must be ensured that the appropriate justification is in place to be able to justify issuing the intervention for the whole of Dwyfor.

6. NEW LOCAL DEVELOPMENT PLAN

- 6.1 Ensuring a fit for purpose local policy framework will be absolutely vital to implement any prospective Article 4 Direction effectively, and to meet the needs of Gwynedd communities and deliver the wider objective of the intervention.

- 6.2 The timetable identified in order to issue the Direction means that it would be in force before the New Local Development Plan is adopted. When preparing and drawing up policies within the New Plan, this means that there will be a need to set out local policy context and include clear policy guidance in order to facilitate the process of determining relevant planning applications, which would meet the objective of implementing the Article 4 Direction in the first instance.
- 6.3 In the meantime, and during the period when the Article 4 Direction is in force before the New Plan is adopted, it will need to be ensured that any prospective planning application complies with the current local and national policy guidance (including the amendments to Planning Policy Wales referred to above).

7. RECOMMENDATIONS

- 7.1 The purpose of the report is to provide an overview of the legislative and planning policy changes that are being introduced, and the work that is progressing as a result. Also, a further report will be submitted to the Committee examining the potential area options where use of an Article direction can be evidenced. Therefore, the Scrutiny Committee is asked to accept the report and make any observations.

APPENDICES

Appendix 1 - A letter confirming changes to planning legislation and policy

Appendix 2 - Work programme: Implementation of an Article 4 Direction