

CYNGOR GWYNEDD CABINET



Report to a meeting of Cyngor Gwynedd Cabinet

Date of meeting: 16/07/24

Cabinet Member: Councillor Dafydd Meurig

Contact officer: Gareth Jones, Assistant Head of Environment Department

Contact Number: 34092

Subject: Consider the representations received during the public engagement period on the Article 4 Direction and make the final decision on confirming the Article 4 Direction.

THE DECISION SOUGHT

1. After considering the representations received during the public engagement period, to confirm the Article 4 Direction dated 1 September 2024 without immediate effect (Appendix 2) for the following uses:
 - (a) Change of use from C3 (primary residence) to C5 (second home) or C6 (short-term let) and specific mixed uses;
 - (b) Change of use from C5 (second home) to C6 (short-term let) and specific mixed uses;
 - (a) Change of use from C6 (short-term let) to C5 (second home) and specific mixed uses.
2. Subject to receiving the Cabinet's confirmation of the Article 4 Direction, to notify those affected in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and authorising the Head of Legal Services to endorse the decision on the Article 4 Direction.
3. To delegate the right to the Head of Environment Department in consultation with the Head of Legal Services to make editorial adjustments to the notice (Appendix 3) prior to its publication.

REASONS FOR THE NEED FOR A DECISION

Changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) have created 3 new use classes for Primary Residence (C3), Second Homes (C5) and Short-Term Let (C6). If considered appropriate, in order to prevent and gain control of the unrestricted change of use between the new use classes, Local Planning Authorities have the power under the Town and Country Planning (General Permitted Development etc.) Order 1995 (as amended) to introduce an Article 4 Direction for a specific area.

Following a decision by the Cyngor Gwynedd Cabinet on 13 June 2023, an Article 4 Direction Notice was served for the Gwynedd Local Planning Authority area. As well as serving the Notice, a period of associated public engagement was undertaken,

The Cabinet is now required to consider the comments received during the public engagement period and the Council's response to the comments, and make a decision on the propriety of confirming the Article 4 Direction or otherwise.

INTRODUCTION AND RELEVANT CONSIDERATIONS

1.0 INTRODUCTION

- 1.1 Amendments to planning legislation that have been in force since 20 October 2022 enable Local Planning Authorities to respond to the challenges associated with second homes and holiday accommodation in a way that was not previously possible.
- 1.2 The changes to planning legislation include:-
 - o Amending the Town and Country Planning (Use Classes) Order 1987¹ to create three new use classes for **primary Residences (C3), Second Homes (C5) and Short-term Lets (C6)**;
 - o Amending the Town and Country Planning (General Permitted Development) Order 1995² to allow unrestricted changes between the three new use classes (Primary Residences, Second Homes and Short-term Lets). In other words, no planning permission is required to move from one of the use classes to another;
 - o Amending 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 taken into consideration when considering the housing requirements and policies in Local Development Plans (LDPs).

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

²[Town and Country Planning \(General Permitted Development\) Order 1995 \(as amended\)](#) (English version only)

- 1.3 As a result of these changes, residential dwellings depending on the use made of them when the legislative changes were implemented, are now defined in accordance with the new relevant use class category. For example, a dwelling-house that is the primary residence for an individual is defined as C3 use (Primary Residence), a property used as a second home is defined as C5 use (Second Home) and a property used as short-term holiday let is defined as C6 use (Short-term Let).
- 1.4 Owners have the right to change the use of a residential dwelling from one of the new use classes (C3, C5 and C6) to another new use class, without the need to obtain planning permission, as the amendment to planning legislation allows this (permitted development right). New planning applications for primary residences/secondary residences (second homes)/short-term holiday lets will receive planning permission for the relevant use class.
- 1.5 If deemed appropriate, in order to restrict and gain control of the unrestricted 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 switch between the use classes without planning permission. An Article 4 Direction can be implemented for the whole Local Planning Authority Area, provided it can be evidenced that there are exceptional circumstances that justify it and that the process of presenting and receiving approval to the proposal has followed the correct procedures. Those procedures are set out in the relevant legislation.
- 1.6 It is emphasised that making 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. Enforcing the requirement to obtain planning permission, means that the impacts of the development must be considered in accordance with the local and national planning policy context.
- 1.7 A public engagement period relating to the Article 4 Direction Notice – without immediate effect – was conducted between 2 August and 13 September 2023. This engagement period was a statutory requirement that is set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended)³.

³[Town and Country Planning \(General Permitted Development\) Order 2022 \(as amended\)](#)

- 1.8 The Council is now required to consider the representations received during the engagement period before it makes its final decision on confirming the Article 4 Direction. This decision will be the responsibility of the Cyngor Gwynedd Cabinet. Should it decide to confirm the Article 4 Direction, it will be effective from 1 September 2024 onwards.

2.0 SCRUTINY

- 2.1 The matter was reported, namely the comments received during the public engagement period along with the Council's response to those comments, to a meeting of the Cyngor Gwynedd Communities Scrutiny Committee on 16 May 2024. The report submitted to the Scrutiny Committee was accepted and it was recommended that the Cabinet confirm the Article 4 Direction.

3.0 PROPOSAL

3.1 Background

- 3.1.1 Over the years, Cyngor Gwynedd has campaigned and pressed on the Government to address the increase in holiday home ownership across the county and the associated side-effects. During 2020 research was prepared by the Joint Planning Policy Service, 'Managing the Use of Housing as Holiday Homes'. The research was approved by the Council's Cabinet and was forwarded for the attention of the Welsh Government.
- 3.1.2 In response to this work together with calls from other groups/organisations the Government was prompted to respond to the crisis by issuing/considering issuing a range of appropriate control measures for holiday accommodation and second homes.
- 3.1.3 One of the control measures implemented is the change to planning legislation, with this change placing the direction of implementation in the hands of Local Planning Authorities.

3.2 The process

- 3.2.1 The process relating to serving a Notice of Article 4 Direction is set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The process has four key stages:-

- **Stage 1: Decide to serve the Article 4 Direction Notice;**
- **Stage 2: Conduct the public engagement period;**

- **Stage 3: Consider the representations received and make the final decision (confirm the Article 4 Direction);**
- **Stage 4: Make the Article 4 Direction**

Stage 1: Decide to serve the Article 4 Direction Notice.

3.2.2 A Justification Paper was prepared by the Planning Policy Service, to support the implementation route associated with introducing the Article 4 Direction. The Justification Paper, along with a draft version of the Notice of Article 4 Direction and a draft version of the Article 4 Direction were submitted to a meeting of the Cyngor Gwynedd Cabinet on 13 June 2023.

3.2.3 At this meeting, the Cabinet resolved:-

- To approve the justification paper for issuing an Article 4 Direction
- To approve making an Article 4 Direction without immediate effect (i.e. implemented following a 12-month period).
- Serving a Notice of the Article 4 Direction.

Step 2: Conduct the public engagement period

3.2.4 The Article 4 Direction Notice was served on 2 August 2023 for a period of six weeks (up until 13 September, 2023). The requirements set out in the Town and Country Planning (General Permitted Development) Order 2022 (as amended) make it a requirement to serve an Article 4 Direction Notice for a minimum period of 21 days. In order to ensure plenty of opportunity for those affected to respond to the Notice, it was decided to place the Notice for a period of six weeks.

3.2.5 It was a requirement to place the Notice in at least two public spaces within the area to which it applies. Since the area where the Article 4 Direction is to be implemented covers the entire Gwynedd Local Planning Authority Area, it was decided that it was reasonable to place a copy of the Notice in a public space in every settlement affected. This meant that 114 site notices were placed.

3.2.6 Further publicity was given to the serving of the Notice by corresponding with every dwelling-house within the Gwynedd Local Planning Authority Area (approximately 52,000 residential dwellings). It is worth emphasising that it was not a requirement to send a letter to every residential dwelling, as the Order states that this is not essential if it is deemed impractical to do so. However, it was considered important that there was awareness of the proposal amongst owners of residential dwellings because of the impact it could have on them,

therefore it was deemed reasonable to attempt to correspond with every residential dwelling.

- 3.2.7 Furthermore, in accordance with the requirements, the Notice was placed in the local newspapers (Caernarfon and Denbigh Herald, Cambrian News and Bangor Mail). Copies of the relevant documents were available to view in the Council's main offices and the local public libraries, and also on the Council's website.
- 3.2.8 As well as serving the Notice, a period of public engagement was undertaken at the same time. Representations could be submitted on paper or on-line.
- 3.2.9 To facilitate the process of making representations, a dedicated web-page was prepared (www.gwynedd.llyw.cymru/article4), which contained the essential information as well as a series of frequently asked questions and answers in the hope of relieving some pressure in terms of the number of enquiries received. Regular use was also made of social media to raise awareness.
- 3.2.10 The questionnaire that was prepared included two open-ended questions which gave people the opportunity to express their opinion on the Article 4 Direction and to note the impact it is likely to have on people with protected characteristics, the Welsh language and people who are economically disadvantaged. The engagement work that has been undertaken goes beyond the statutory requirement, but because the Article 4 Direction covers the entire Local Planning Authority area and affects all residents in the area, it was important to do what was both reasonable and practical for us to do as an authority.

Stage 3: Consider the representations received and make the final decision

- 3.2.11 During the period of public engagement a total of 3,902 valid responses were received. 3,508 representations were made through the online questionnaire and 394 representations were submitted via letter or e-mail. In addition to these valid responses (valid in that a representation was submitted), 369 void responses were also made. Although these void responses did not include a response to the question relating to seeking an opinion, some of the responses have responded to the section 'About me' (personal details).
- 3.2.12 An Engagement Report has been prepared to report on the representations received during the engagement period (Appendix 1). Due to the nature of the representations and the wide range of

matters raised, the responses received have been categorised according to specific themes. For each of these themes the number of comments received that applied to those themes has been recorded, a summary of the comment, and the 'Council's Response' to the matter in question. Under each main theme, Sub-themes have been recorded. The representations received were recorded in accordance with these sub-themes. There may be some instances where a respondent has raised a comment that applies to one or more of the sub-themes. The total 'Number of Comments' recorded is based on the combined number of responses that emerge from the sub-themes.

- 3.2.13 In examining the Engagement Report (Appendix 1), a response to the representations received is noted. The nature of the response to the representations varies, with more consideration and attention usually given to comments where there is a need to refer to specific or additional evidence to address the Council's response.
- 3.2.14 Each stage of the process of preparing the Article 4 Direction has been subject to a specialist legal assessment, and amendments have been made that reflect the guidance received.
- 3.2.15 We note also that some of the responses have led to undertaking additional research, including liaising with local mortgage lenders as well as local Councils.
- 3.2.16 The main objective of introducing the Article 4 Direction will be to try to overturn the social inequality that exists in some of Gwynedd's communities, seeking to ensure that a provision of housing (including affordable housing) is available to meet local need.
- 3.2.17 A range of responses have been received which include comments that are generally supportive of the proposal and consider that it would offer opportunities for people to live in their communities. On the other hand, many are concerned that the proposal will affect them adversely because of the concern that it would lead to reducing property value meaning that individuals/families will end up in negative equity on their property and will have difficulty in obtaining mortgages.
- 3.2.18 The 'Public Engagement Report: Notice of Article 4 Direction Engagement Period' which can be found in Appendix 1, is a core part of this report and the basis for the Cabinet's decision. The Public Engagement Report includes an analysis of the representations which are central to the Cabinet's decision and the recommendation made to the Cabinet. Cabinet members should consider these representations when making their decision.

- 3.2.19 It is also considered that the Report in Appendix 1 responds to the concerns as outlined in paragraph 3.2.18. With regard to decreasing the value of properties, research has been conducted looking at how similar mechanisms have affected property value in other areas - the research concluded that there was no distinct pattern evident. Further research has also been carried out in respect of mortgage availability and the effect that the proposal could have on the tourism sector.
- 3.2.20 The Article 4 Direction was originally presented after preparing the Justification Paper that was submitted to the Council's Cabinet in June 2023. Following the public engagement period and the process of weighing up the responses received and responding to them (see Appendix 1), we have not found any additional information that would justify not confirming the Article 4 Direction.

Stage 4: Make the Article 4 Direction

- 3.2.21 Subject to the Cabinet's decision, the Article 4 Direction will be operational from 1 September 2024 onwards. Due to the additional workload that is anticipated following the decision, a successful recruitment process has been undertaken for two additional Planning Trainees to the Planning Service (in addition to the two officers that have already been recruited). The anticipated additional workload includes:-
- Lawful Use Certificate applications received, with property owners seeking formal confirmation of the use;
 - Change of use applications being submitted for uses that were permitted development previously;
 - An increase in the number of complaints received in terms of misuse of residential dwellings;
 - More general enquiries to gain a better understanding of the situation.
- 3.2.22 The additional posts will be funded using the money that has been allocated by the Government in relation to supporting a range of activities related to the Dwyfor Pilot Scheme, along with money that has been earmarked by the Council.
- 3.2.23 Another important element to ensure that the broader objective of implementing the Article 4 Direction is achieved will be to ensure that the local planning policies are fit for purpose. As such, it is intended to

prepare a new Supplementary Planning Guidance to provide local planning policy guidance that relates specifically to the implications of making the Article 4 Direction. Further, there will be a need to consider the content of the relevant policies contained in the new prospective Local Development Plan.

4. CONSIDERING THE IMPACT

- 4.1 The Council is required (under the Equality Act 2010) to consider the impact that any changes in any policy or procedure (or the creation of a new policy or procedure) will have on people with protected equality characteristics. The Council also has additional general duties to ensure fairness and to foster good relationships. An Equality Impact Assessment should therefore be undertaken before any decision is taken on any relevant change (i.e. that affects people with protected equality characteristics).
- 4.2 The Council is also required, under the Welsh Language Standards (Section 44 of the Welsh Language (Wales) Measure 2011), to consider the impact that any change in policy or procedure (or creating a new policy or procedure), will have on opportunities for people to use the Welsh language and to ensure that the Welsh language is not treated less favourably than English.
- 4.3 Furthermore, in accordance with the Socio-economic Duty that came into force in Wales on 31 March 2021 public bodies have a duty to consider how strategic decisions, including setting objectives and developing public services, can reduce inequalities in terms of the outcome for people facing socio-economic disadvantage.
- 4.4 To assess how the proposal of introducing the Article 4 Direction would affect the requirements noted above, an integrated Equality Impact Assessment (Assessing Impact on Equality Characteristics, the Welsh language and Socio-Economic Disadvantage) has been prepared. The Assessment can be found in Appendix 4. This Assessment has been amended following the public engagement period.
- 4.5 The Assessment highlights that it is difficult to predict the impact of implementing the Article 4 Direction as taking this form of action is unprecedented. However, it is noted that the social inequality that currently exists in some communities in light of the lack of affordable housing along with house prices that are beyond the reach of Gwynedd residents is creating an unsustainable divided society. In an effort to seek to overturn the current situation it is hoped that

introducing the Article 4 Direction, will provide an opportunity to assess the propriety of any proposal that involves changing the use of a residential home to holiday use, be that use as a holiday let or a second home. We hope that this will create a fairer society and will ensure opportunities for all to be able to live in their area of choice. It is therefore noted that reducing inequality that stems from socio-economic disadvantage is a core part of the reason why we need to introduce the Article 4 Direction. It was further concluded that the new procedure would be more inclusive and would offer everyone an opportunity to have input to the Planning process.

- 4.6 The assessment also concludes that the making of the Article 4 Direction would have a positive impact on the Welsh language and the balance of communities as it is hoped that it will stabilise the housing market and offer opportunities for people to be able to live in their communities.
- 4.7 The Assessment highlights that it will be crucial to secure an appropriate monitoring framework to assess the impact of acting under the Article 4 Direction and will be a means of identifying negative (and positive) impacts and seeking to respond to them as required.

The Well-being of Future Generations (Wales) Act 2015

- 4.8 Another important consideration is the Well-being of Future Generations (Wales) Act 2015. The Act seeks to improve Wales's social, economic, environmental and cultural well-being. The act places a well-being duty on public bodies which is aimed at delivering the seven well-being goals by following the five ways of working. The following table highlights these well-being goals and explains concisely how the proposal achieves the goals in question:-

Goal	Explanation of how the proposal of introducing the Article 4 Direction achieves the goal
A prosperous Wales	It will offer opportunities for people to live and work in Gwynedd, thus meaning that there is a stable, skilled and educated population to support the local economy.
A resilient Wales	It will lead to a fairer society and thus the county's social resilience will be maintained.
A healthier Wales	It will create a fairer society and thus will create circumstances for people to be able to live and work in Gwynedd, which in turn has a positive

	impact on health.
A more equal Wales	It will create a society that is more equal and will enable better opportunities for all.
A Wales of cohesive communities	It will be a means of creating attractive, viable and safe communities.
A Wales with a vibrant culture and a thriving Welsh language	It will offer better opportunities for people to be able to live in their communities and will be an indirect means of protecting culture, heritage and the Welsh language.
A globally responsible Wales	Although implementing the Article 4 Direction would be done on a local level in Gwynedd, the principle of creating a fairer society and offering better opportunities for people to live and work in their local communities thus creating viable and sustainable communities is an example of good practice.

5.0 CONFIRMING THE ARTICLE 4 DIRECTION

- 5.1 The Article 4 Direction was originally presented to the Cabinet on 13 June 2023 after preparing the Justification Paper. The Justification Paper reported the reasons for proposing the Direction, outlining the current housing situation in the Gwynedd LPA area, and the options that were available to the Council to implement.
- 5.2 After weighing up the responses received and the Council's response (Appendix 1) and having taken into consideration the impact assessments (Appendix 4) and the characteristics listed in the Well-being of Future Generations (Wales) Act 2015 and weighed up all the issues in this report, we are not of the view that there is justification for not confirming the Article 4 Direction.
- 5.3 The process involved with preparing and confirming the Article 4 Direction is set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended). If the Cabinet decides to confirm the Article 4 Direction, the steps for notifying and raising awareness of the decision will have to follow the prescribed steps that are set out within the Order.
- 5.4 This will involve the need to:-
- Post a local notice;
 - Place a site notice for a minimum of 5 weeks;

- Notify those affected (unless it is considered impractical to do so).
- 5.5 As the proposal affects all residential properties across the Local Planning Authority area, it is important to try to raise awareness and publicise it appropriately. It is considered appropriate that every effort is made to send a letter to every residential dwelling in the Gwynedd Local Planning Authority area, notifying them of the decision and including details of how they can obtain more information.

Raising Awareness

- 5.6 It is acknowledged that the confirmation of the Article 4 Direction would lead to a fundamental change, and as such it is essential that there is awareness of the proposal.
- 5.7 A dedicated web-page has already been created on the Council's website (www.gwynedd.llyw.cymru/erthygl4) which contains all the relevant information to assist members of the public to understand the proposal and its implications. This page contains a series of questions and answers. The web-page will be amended as required.
- 5.8 It is considered that using the Council's social media is also an extremely useful and far-reaching method of raising awareness. Every effort will be made to use social media to raise awareness of the implications of the Article 4 Direction.
- 5.9 Furthermore, if appropriate, it is intend to arrange a session for raising awareness with all the local members of the County following the decision.

Views of the statutory officers

The Monitoring Officer:

"I can confirm that this report and process have received continuous legal advice and the report appropriately sets out the legal context for the decision sought. The steps taken in accordance with the statutory requirements to publish the Article 4 Direction and undertake a statutory period for representations. Detailed information on the representations received together with the response and assessments of the information is provided in Appendix 1. In addition to this a Consolidated Impact Assessment, Annex 4 is provided which addresses the Cabinet's responsibilities under the Equality Act 2010 and the Welsh Language

(Wales) Measure 2011. It is also noted that the matter has been considered by the Communities Scrutiny Committee. In assessing and reaching a decision on the confirmation of the Article 4 Direction I would emphasise the importance of Cabinet Members of giving detailed and careful attention to this information as a whole."

Head of Finance Department:

"I can confirm the financial information that appears in the report, and that the Planning Service received a one-off bid of £400,000 by the Cabinet in March 2023 to fund the cost of introducing this new regime. There will of course also be some indirect financial implications, such as the impact the proposed policy will have on Council Tax collection within the county should the policy result in a change in the number of properties subject to the Premium on second homes and long-term empty properties, but these factors have been considered when formulating the policy."

Appendices

Appendix 1: Public Engagement Report: Article 4 Direction Notice

Appendix 2: Article 4 Direction

Appendix 3: Notice (Draft) of Confirming the Article 4 Direction (without immediate effect)

Appendix 4: Impact Assessment

Background documents

Representations received during the public engagement period.