

# Appended Report - Second Homes and Short-term Holiday Lets

## Background - Legislative Changes

In response to research on the impact of second homes and short-term lets on housing markets and communities in localities across Wales, the Welsh Government announced a series of measures aimed at providing greater controls in relation to the use of properties as second homes and short-term commercial lets. These include:

- Providing Local Authorities with the ability to charge 300% on Council tax for second homes.
- The introduction of a licensing scheme for short-term lets (a consultation on this is currently underway).
- Changes to planning legislation and policy. It is this measure that this report has primary focus, noting the planning interventions and implications and the remit as a Local Planning Authority (LPA).

In October 2022 the Welsh Government via an amendment to The Town and Country Planning (Use Classes) Order 1987 introduced the following three new use classes. At present, owners can change between these specific use classes without the need for planning permission:

- Use class C3 (dwelling houses; used as sole or main residences occupied for more than 183 days in a calendar year).
- Use class C5 (Dwelling houses; used otherwise than as sole or main residences covering a dwellinghouse other than as a sole or main residence and occupied for 183 days or fewer in a calendar year i.e., second homes).
- Use class C6 (Short-term lets, covers the use of a dwellinghouse for commercial short-term letting not longer than 31 days for each period of occupation).

New planning applications for main residences/second homes/short-term holiday lets will need to obtain planning permission for the relevant use class.

The Welsh Government has also amended the Town and Country Planning (General Permitted Development) Order 1995 to allow changes of use between the new use classes - C3, C5 and C6 or a mixture of those uses to be permitted.

## Background: National Planning Policy: Planning Policy Wales

As part of the changes to the legislative provisions, complementary amendments have also been made to section 4.2 of the forthcoming Edition 12 of Planning Policy Wales (PPW). This introduces a requirement for Local Development Plans (LDPs), where there is a prevalence of second homes and short term lets in a local area, to take them into account when considering future housing requirements and policy approaches.

PPW also refers to a co-ordinated approach being required with a need to explore options when drafting or redrafting LDPs. This includes:

- The introduction of a cap or ceiling on the number of second homes or short-term lets.
- Where clearly evidenced, the potential divergence from national policies in order to meet specific local housing needs for market housing. This should be accompanied

by specific justification, e.g. through, land supply, environmental or social impacts, including the prevalence of second homes and short-term lets.

- Area specific Article 4 Directions could be considered which may limit the use of all new housing to being sole or main residences.

Note: The preparation of the Second Deposit Revised LDP was sufficiently advanced so that the above provisions could not be incorporated within our evidence, and into any robust policy approaches within the emerging Plan.

However, these changes in legislation and national policy, along with the further evidence on second homes and short-term holiday lets within Carmarthenshire as proposed within this report, will be further considered as part of the LDP's examination in public.

## **Article 4 Directions**

Additional changes to the Town and Country Planning (General Permitted Development) Order 1995 introduced amended processes which now give LPAs the ability, where they have evidence, to disapply permitted development rights within a specific area. This is done by the LPA making an Article 4 Direction which must be accompanied by clear and robust evidence in support of the approach and in accordance with regulatory processes.

Where used, an Article 4 direction takes away permitted development rights within a specific area or site. Where an Article 4 Direction is in place, it would be possible for the LPA to remove the permitted development rights for some types of development. This would make it a requirement for instance for residential property owners to obtain planning permission from the Authority before changing their property to a specific use including second homes and short term lets. The potential introduction, scope, and content of an Article 4 Direction is for the LPA to decide. Indeed, any decision on how to take forward the response to the level of second homes or short-term holiday lets must be supported by evidence. In relation to an Article 4 Direction it, should demonstrate that there are exceptional circumstances that justify it.

It is important to note that the issuing of 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.

## **Introducing an Article 4 Direction**

When introducing and implementing the Article 4 Direction, it is a requirement to follow the procedures set out in legislation through the Town and Country Planning (Permitted General Development) Act 1995 as amended.

It is possible to issue two types of Article 4 Direction, namely:

- A Direction with immediate effect which means that the Article 4 Direction comes into force prior to public engagement.
- A Direction that does not come into immediate effect which means that public engagement is held before the Article 4 Direction comes into force.

Whilst both approaches have their merits, should the authority in the future deem it appropriate to put an Article 4 Direction in place, it will need to consider the potential implications of each approach. In this respect the relative risks to the authority will need to be carefully considered - notably the right to potential compensation that would be payable in the context of an immediate effect Article 4 Direction. The significance of this risk will need

to be fully understood. The non-immediate Article 4 Direction would include issuing a 12 month notice prior to when the Article 4 Direction comes into force.

Irrespective of the approach adopted in relation to the Article 4, the evidence base supporting the exceptional local circumstances should be prepared following which the authority would need to determine what if any interventions are needed and if an Article 4 Direction is appropriate.

**Note:** Officers have begun to consider the implications of these legislative, national planning policy changes for future policy development. Initial evidence prepared in relation to the level of second homes by communities will be updated and expanded upon in light of the staged approach proposed in this paper and to reflect the need to consider the subsequent changes to legislation and national planning policy. It will also seek to ensure it reflects the evidential provisions needed to inform the potential introduction of an Article 4 Direction.

In this respect, it is considered that additional/updated data analysis and further research would be required to explore establishing an Article 4 Direction. Consideration is being given to the scope of this additional work.

Officers are working closely with other authorities and other groups on best practice, particularly where they are faced with similar issues.

## **Evidence Gathering**

The Authority has collated evidence previously in relation to second homes. However, whilst providing a useful context it is not up to date and further research is needed including drawing on and analysing other datasets before any conclusions regarding the use of Article 4 Directions or other approaches are reached.

This local evidence will highlight the impact of second homes and short-term lets including where appropriate on specific communities. It will also form part of a co-ordinated response which applies all available interventions and will include effective community engagement.

It is anticipated this evidence will be based on, and will develop further liaison and good practice with other authorities, and will include:

- a baseline assessment of the number of second homes and short-term holiday lets including their spatial spread.
- outline and assessment of potential planning and non-planning interventions
- a qualitative assessment of the housing market, community facilities and the latest Welsh language data.
- an assessment of impact (quantitative), and
- an options appraisal in terms of potential interventions along with options in relation to the use of Article 4 Directions.

A future report detailing the outcome of this evidence gathering and identifying options, including the potential for an Article 4 Direction, will be brought back to progress the implementation of any identified interventions.

## **Use of Planning Conditions**

Pending any future decision on the use of an Article 4 Direction, planning conditions may be used in the shorter term. For instance, new planning applications for C3 (dwelling houses; used as sole or main residences) may though condition be restricted to prevent a change of use to second homes (C5) or short-term holiday let (C6). However, this would not prevent those existing dwellings moving for instance from C3 to C6. The imposition of an occupancy condition may be considered on a case-by-case basis.

Planning conditions are subject to a number of tests established in the Welsh Government circular WGC016/2014 with any condition required to be: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects.

## **Developments across Wales**

The authority continues to work closely and collaboratively with local authorities across Wales including through the Welsh Local Government Association (WLGA) and the Planning Officers Society for Wales (POSW). In terms of the progress of other authorities it is noted that in June 2023 Gwynedd County Council resolved to introduce an Article 4 Direction with a view to bringing it into force by summer 2024. It should be noted that other authorities are currently evaluating the next steps including evidence gathering to inform any future response.

## **A Staged Approach**

Amendments to planning legislation in Autumn 2022 created the opportunity for the Local Planning Authority to use both Article 4 Directions and the imposition of planning conditions to restrict the use of dwellinghouses to main residences in new developments.

The following stages will be adopted in developing a policy approach to second homes and short-term holiday lets:

### **Stage 1** Collaboration, Evidence Gathering and Short-Term solutions:

- Collaborate with LPA's across Wales, including through POSW Working Group and sub-task group, WG and WLGA.
- Internal partnerships e.g. corporate policy.
- Stakeholder/Partner Engagement.
- Planning Conditions – Utilise planning conditions where appropriate recognising their limitations on controlling permitted development.

### **Stage 2** Develop Evidence Base including the following elements:

- Non planning based interventions.
- Baseline and spatial spread of second homes and short-term holiday lets.
- Rural and community service impacts.
- Housing market impacts (process and affordability).
- Socio, cultural and Welsh language Impact.
- Economic and sectoral impact.
- Options Appraisal including use of Article 4 Direction(s).

**Stage 3** – LDP Policy framework – through the examination process examine and set out LDP policy approaches to respond to evidence and put necessary provisions in place. Any

potential changes to the LDP policies will be subject to matters arising changes as part of the examination, and consulted upon accordingly as well as the content of the independent Planning Inspector's Report into the Revised LDP.

#### **Stage 4 – Option Selection and Preferred Option**

- Reporting of evidence, options, and preferred options through democratic process.
- Risk identification.
- Legal process and counsel opinion (where required).
- Financial implications, including risk of compensation.
- Identified Options and informal consultation (incl. internal, cabinet, sectoral and public feedback).
- Preferred Option and Implementation requirements including potential Article 4 Direction.
- Formal public consultation/engagement.
- Publication of Notice of Article 4 Direction.
- Identification of resource pressures to manage and monitor compliance including potential staff recruitment.

#### **Stage 5 – Adoption of Policy Option and Implementation**

- Reporting of consultation responses and resolution to adopt and implement, including potential Article 4 Direction.
- Devise and implement compliance monitoring structure (including internal links to Council Tax) and staff structures/recruitment, charging schedules to effectively manage compliance monitoring and future legal actions.
- Adoption and adherence to legal processes.
- Web and other guidance material.
- Training and briefings incl. County Cllrs, agents/developers, Town and Community Councils etc.
- Monitoring and Compliance arrangements including staff and resource requirements.

#### **Legal Diligence**

It is essential to note that the evidence gathering, and processes involved in controlling changes of use, including through Article 4 Direction(s), requires due diligence to avoid legal challenge including through the high court. Stages 4 and 5 above will be undertaken with reference to understanding the legal implications of the policy approach and the processes being undertaken. Where necessary counsel opinion will be sought to ensure the approach and processes followed safeguard the authority from successful legal challenges, compensation claims and/or where appropriate appeals.

Further details will be set out in future reports.

#### **Timetable**

Using the Stage Approach outlined above as a template, the following sets out an indicative timeline for the delivery of a robust and deliverable planning policy approach for second homes and short-term holiday lets. It should be noted, the following are indicative and

include the reporting timescales associated with taking the various stages through the Council's democratic processes.

Stage		Completion
<b>Stage 1</b> Collaboration, Evidence Gathering and Short-Term solutions	Commenced.	Ongoing
<b>Stage 2</b> Develop Evidence Base including the following elements	Evidence gathering commenced. Development of options appraisal and reporting.	anticipated completion December 2023  January 2024
<b>Stage 3</b> LDP Policy framework	Commenced with Examination starting January 2024 and Adoption of LDP Policies December 2024.	December 2024
<b>Stage 4</b> Option Selection and Preferred Option	Reporting January 2024 through to public consultation April - June 2024, and Publication of Notice of Article 4 Direction (April 2024).	
<b>Stage 5</b> Adoption of Policy Option and Implementation	Reporting September – November 2024. Adoption non-immediate Article 4 Direction(s) following 12 months' Notice prior to the Article 4 Direction coming into force – April 2025.	Adoption - April 2025