

Item No. **XX**

Report of Director of Place

To

Planning Committee – 3rd July 2018

CONFIRMATION OF ARTICLE 4(2) DIRECTION IN RELATION TO SELECTED PROPERTIES AND BOUNDARIES WITHIN THE FFYNONE AND UPLANDS CONSERVATION AREA

Purpose:	To report the representations received during the consultation on the proposed Article 4(2) Direction in regard to selected properties and boundaries within the Ffynone & Uplands Conservation Area and to confirm the final Article 4(2) Direction.
Policy Framework:	City and County of Swansea Unitary Development Plan (Adopted November 2008). Planning (Listed Buildings and Conservation Areas) Act 1990
Reason for Decision:	Final approval of an Article 4(2) Direction must be confirmed by the Planning Committee
Consultation:	Legal, Finance, Access to Services.
Recommendation(s):	<ol style="list-style-type: none">1) Note the consultation responses received as set out in Appendix A2) Confirm the final Article 4(2) Direction as set out in appendix B3) Delegate the Head of Planning and City Regeneration to write to all affected properties confirming the final Article 4(2) Direction
Report Author:	Steve Smith, Design & Conservation Team Leader
Finance Officer:	Aimee Dyer
Legal Officer:	Jonathan Wills
Access to Services:	Rhian Millar

1.0 Background

- 1.1 The Ffynone and Uplands Conservation Area Review was subject to public and stakeholder consultation in 2014 and approved by Planning Committee in January 2016. One issue highlighted in the review was the gradual erosion of character within the conservation area due to the cumulative impact of changes to houses currently allowable under Permitted Development. This includes removal of architectural features such as bay windows/ door cases; repairs using inappropriate materials; and removal of boundary walls.
- 1.2 An action approved as part of the Conservation Area Review was to assess all houses within the Conservation Area to determine which would benefit from an Article 4(2) Direction to remove selected Permitted Development Rights to stop or allow control over minor changes.
- 1.3 This report sets out the draft Article 4(2) Direction, the consultation undertaken, the representations received and the final amended proposed Direction.

2.0 Article 4(2) Direction

- 2.1 An Article 4(2) Direction removes permitted development rights for certain changes which do not currently require Planning Permission such as removal of front boundaries, changing windows, removing/ altering bay windows etc. which may undermine the special historic character of the conservation area. An Article 4(2) Direction can be made to remove one, all or a selection of Permitted Development Rights and this requires that the changes obtain planning consent which allows potentially harmful changes to be considered as planning applications on a case by case basis.
- 2.2 It should be noted that commercial properties such as offices and flats do not have Permitted Development Rights to make minor external changes. The Welsh Government is currently consulting on whether HMOs should have Permitted Development Rights as this is currently a grey area.
- 2.3 An initial Officer assessment of all 1400 unlisted houses in the enlarged Ffynone & Uplands Conservation Area was undertaken to identify those properties with a strong architectural qualities and original details. As a result the draft Article 4(2) Directions highlighted approximately 270 houses for protection as shown in the plan at Appendix B. The proposal consulted upon was the removal of the following Permitted Development rights for the selected properties as set out in Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 as follows:
 - **Part 1, Class A** – The enlargement, improvement or other alteration of a dwelling house.
 - **Part 1, Class C** – Any other alteration to the roof of a dwelling house.
 - **Part 1, Class D** – The erection or construction of a porch outside any external door of a dwelling house.

- **Part 2, Class C** – The painting of the exterior of any building or work.
- **Part 2, Class A** – The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
- **Part 31, Class B** – Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

2.4 These properties were all photographically recorded immediately prior to serving the draft Article 4 (2) Direction as a record of the condition/appearance of the properties at the time that the Permitted Development Rights were removed. This provides record information for planning enforcement if required.

2.5 In addition, the Ffynone and Uplands Conservation Area review proposed the serving of a 'blanket' Article 4(2) Direction to remove the right to demolish boundary walls to all houses within the conservation area. This was refined to address selected boundaries to approximately 140 properties (in addition to those identified in 2.3 above) for the consultation. The proposal consulted upon is the removal of the following Permitted Development rights for the selected properties as set out in Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995:

- **Part 2, Class A** – The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
- **Part 31, Class B** – Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

2.6 The process for the draft Article 4(2) meant that the Direction was effective immediately after the notice was served (19th March 2018), however it will expire after six months (19th September 2018) unless it is confirmed before then. There is a requirement to undertake consultation for at least 21 days and in deciding whether to confirm a direction made under Article 4(2), the Council shall take into account any representations received during the period specified in the notice. The legal requirement for notification of confirmation of the Direction is the same as for serving it, in this case by letter to the owners/occupiers of the properties covered by the Direction and by publication in the local newspaper.

3.0 Consultation

3.1 The Consultation period on the draft Article 4(2) Direction lasted 5 weeks from 19th March 2018 to 23rd April 2018. The consultation methods were as follows:

- Briefing Ward Councillors;
- Briefing Cabinet Members;

- Press Notice in the South Wales Evening Post (published on 19th March 2018);
- Bilingual Letters sent to all affected properties and registered owners of HMOs where Permitted Development Rights were proposed to be removed;
- 24 Bilingual notices posted on lamp posts through-out the Conservation Area; and
- Information posted on the Council Web site.

4.0 Representations Received

- 4.1 In total 13 responses were received which have been broken down into 34 separate comments as set out in Appendix A. This equates to a response rate of 3% which is considered acceptable on the basis that property occupants/ owners usually respond when they are concerned and are less likely to do so if they are supportive. Therefore the low response rate could be viewed as broad acceptance or lack of interest in the proposed Article 4(2) Direction.
- 4.2 On the basis that properties within the Conservation Area include HMOs which are tenanted, the registered owners of the affected properties were contacted using the HMO landlord register. It was not considered necessary or a prudent use of Council resources to undertake a full Land Registry Search for every property to establish the ownership.
- 4.3 Appendix A sets out the full comments received, the assessment of these comments and any changes stemming from this assessment. Where similar comments were made by differing respondents, these have been grouped. The main comments received, consideration of these and recommended amendments are summarised below.
- 4.4 There was broad support from the majority of the respondents however some raised questions of how the Article 4(2) Direction would operate (see below). There were also a number of concerns raised which are documented in Appendix A and summarised below.
- 4.5 Although the consultation letter set out the Permitted Developments that were proposed to be removed and the process for obtaining planning permission to undertake work where these rights have been removed. The consultation responses still demonstrated uncertainty over how the Article 4(2) Direction would operate and how it would relate to routine maintenance work where Permitted Development Rights have been removed. It is not the intention of the proposed Direction to restrict appropriate routine maintenance work, but the withholding of permission can be used to control the increasing issues with inappropriate maintenance and/or removal of building features which collectively are diminishing the character and quality of the Conservation Area. Where a proposed 'change' alters the character, this would require planning permission under the Article 4(2); this is a free process and the target to determine this is 8 weeks. The process and application of the Article 4(2)

Direction to regular maintenance activities can be clarified through the inclusion of a 'frequently asked questions' (FAQs) list with the notification letter that will be sent to confirm the final Article 4(2) Direction. These FAQs can also be kept up to date on a dedicated page within the Council web site. As an example, there would be no controls over the painting of already painted houses, nor on the colour that they are painted. Instead the painting controls would relate to masonry buildings (brick or stone) such as Mirador Crescent where the masonry finish part of the harmonious character and permission would not be granted to paint these.

- 4.6 There were questions raised in the responses over why the Article 4(2) Direction is needed and how it would be enforced. The current Conservation Area designation does not restrict works to houses which is degrading the character of the area as identified in the Conservation Area review. The starting point for protecting the character and special interest of the conservation area is the Article 4(2) Direction to bring minor changes to houses under planning control, this also allows planning enforcement action if necessary.
- 4.7 There were questions of whether the Article 4(2) Direction is retrospective. It took force from the date of the draft Direction (19th March 2018) and cannot be applied to works prior to this date. A photographic survey of all dwellings subject to the Direction was undertaken at the time of serving to allow unauthorised works after this date to be identified.
- 4.8 Lack of a plan; there was an administrative error that mentioned the plan showing all properties affected by the proposed Article 4(2) Direction in the letter but was not included in the mail-out. The plan was prepared to give an overview and was available for download on the Council web site and was posted to the single individual who requested it. The plan was 'supplementary information' – the letters were sent to all properties affected by the proposed Article 4(2) Direction clearly stating that this affected the specified property. Therefore the omission of the plan is not pertinent to the validity of the Article 4(2) Direction.
- 4.9 There was a specific challenge from one respondent regarding 50/52 Eaton Crescent which were identified for boundaries and property protection whilst the wider group of similar gable fronted semi-detached houses were proposed for the less boundary only protection. The reason for this is that 50/52 Eaton Crescent were considered to be the best preserved of this group and others had been more altered. However on reflection it is considered appropriate to downgrade the level of protection to 50/52 Eaton Crescent to remove Permitted Development Rights in relation to boundary alterations only to match the wider group.
- 4.10 It was pointed out that 2 Eden Avenue is a grade II listed building and that already has all Permitted Development Rights removed by Cadw at the time of listing. Therefore this property has been removed from the current Article 4(2) proposals.

- 4.11 There was a challenge to the Article 4(2) Direction from one respondent on the basis that it would be contrary to the Human Rights Act, specifically Article 3 in relation to property rights. In response, Article 4 Directions are used widely across the UK and the planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the planning decision-making process to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed. The process is free to apply and there is a right of appeal to the Welsh Government.
- 4.12 The full detail of the comments received are set out in Appendix A.

5.0 Final Article 4(2) Direction

- 5.1 In response to the consultation comments only very minor changes have been made and the final article 4(2) Direction is as follows.
- Alteration of 50/52 Eaton Crescent to denote Article 4(2) control of changes to boundaries only as per rest of group of similar gable fronted semi-detached houses (change of blue dot to red dot)
 - Remove proposed Article 4(2) direction from 2 Eden Avenue as this is a grade II Listed Building where all Permitted Development Rights are already removed.
 - Include a 'frequently asked questions' list setting out the process for gaining permission for regular maintenance works under the Article 4(2) Direction with the notification letters confirming the final Article 4(2) and keep this up-to-date on the Council web site.
- 5.2 The extent of the final Article 4(2) Direction is shown in Appendix B:
- The properties highlighted with a blue dot denote removal of the following Permitted Development rights for the selected properties and the associated boundaries as set out in Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 as follows:
 - **Part 1, Class A** – The enlargement, improvement or other alteration of a dwelling house.
 - **Part 1, Class C** – Any other alteration to the roof of a dwelling house.
 - **Part 1, Class D** – The erection or construction of a porch outside any external door of a dwelling house.
 - **Part 2, Class C** – The painting of the exterior of any building or work.
 - **Part 2, Class A** – The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

- **Part 31, Class B** – Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.
- The properties highlighted with a red dot denote removal of the following Permitted Development rights in relation to the boundaries only as set out in Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995:
 - **Part 2, Class A** – The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
 - **Part 31, Class B** – Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

6.0 Financial Implications

- 6.1 If a Direction is made under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995, no fee is payable for a planning application made in respect of what would have been permitted development had there been no Article 4(2) Direction.
- 6.2 The Article 4(2) Directions will create additional workload for both Development Management and Design and Conservation Teams of the Planning Department, in terms of the generation of additional planning applications and associated guidance in terms of acceptable design and materials. However this is considered necessary to better look after the heritage and character of the Ffynone and Uplands Conservation Area. Furthermore it should be noted that the proposed approach which targets specific permitted development rights of dwellings in comparison to a blanket/‘catch-all’ approach applied indiscriminately across all permitted development categories will reduce the number of applications received. Any extra costs incurred through additional workload will be met from the existing budget. These additional planning applications will also require funding in terms of advertising these in the local press. This advertising will need to be met through the advertising budget for such purposes.

7.0 Legal Implications

- 7.1 If confirmed, the Article 4(2) Direction will remain valid unless it is withdrawn. The making of the Direction removes the permitted development rights that property owners/occupiers previously enjoyed in respect of various changes to or removal of architectural features of merit as well as the painting of brick or stone dwelling façades. This will require property owners/occupiers to apply for planning permission to undertake such works which would otherwise not be required and if necessary the Council can refuse planning permission for works and alterations that are considered to be harmful to the character of the area. Should consent be refused or granted subject to conditions, an applicant may be entitled to

compensation under Section 108 of the Town and Country Planning Act 1990.

8.0 Equality and Engagement Implications:

- 8.1 An Equalities Impact Assessment (EIA) screening has been undertaken with the result that a full EIA is not required.
- 8.2 Where proposals for works controlled by the Article 4(2) Direction require planning permission, the assessment of the application will include consideration of equalities and access.

Background Papers:

- Ffynone and Uplands Conservation Area Review Document
- Planning Committee Report, January 2016

Appendices:

- A Record of comments made on draft Article 4(2) Direction, assessment of comments and resulting amendments.
- B Final confirmed Article 4(2) Direction plan
- C Equalities Impact Assessment Screening