

# Report

## Cabinet Member for Sustainable Development

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### Part 1

Date: 23 July 2020

**Subject** Formal approval of the Article 4 (2) Directions affecting Caerleon, Stow Park and The Shrubbery Conservation Areas.

**Purpose** Following notification and consultation of the proposed Article 4(2) Directions, affecting Caerleon, Stow Park and The Shrubbery Conservation Areas, consideration of the consultation responses and formal confirmation of the Directions are sought.

**Author** Planning Policy Manager

**Ward** Stow Hill, Caerleon, Gaer and Allt Yr Yn

**Summary** The Council is in the final stages of introducing Article 4(2) Directions for the Caerleon, Stow Park and The Shrubbery Conservation Areas. An Article 4(2) Direction removes specific permitted development rights from residential properties and its aim is to protect the special character of the Conservation Areas.

A consultation with affected properties was conducted in February and March 2020. Eight responses were received following notification of the provision of the Article 4(2) Directions. Following consideration of these responses, the Council does not propose any changes. It is now proposed that the Article 4 (2) Directions are formally confirmed and notification is sent to all those properties affected by this decision.

**Proposal** That Cabinet Member notes the comments received. The Cabinet Member agrees to formally confirm the Article 4 (2) Directions for the Caerleon, Stow Park and The Shrubbery Conservation Areas.

**Action by** Head of Regeneration, Investment and Housing

**Timetable** Immediate  
*There is a legal obligation to decide whether to formally confirm the Article 4(2) direction within 6 months of consultation starting (deadline 13<sup>th</sup> August 2020).*

This report was prepared after consultation with:

- Strategic Director - Place
- Head of Law and Regulation – Monitoring Officer
- Head of Finance – Chief Finance Officer
- Head of People and Business Change

**Signed**

## Background

On the 31<sup>st</sup> January 2020, endorsement was received for alterations to the boundary of four Conservation Areas within Newport. This endorsement also agreed to approve the process for the making of Article 4(2) Directions for the Caerleon, Stow Park and The Shrubbery Conservation Areas. Notification was made to each property affected and a press notice served in the local paper.

An Article 4(2) Direction is something that only the Council can implement. It removes specific permitted development rights from residential properties. In this instance, the Directions will mean that planning permission will now be required for works which involve the replacement/removal/modification of windows, external doors, roof coverings, boundaries, render and painting. The Directions apply to domestic buildings and structures, but only to those parts that front onto the public highway, waterways or open spaces.

A consultation period concerning the impacts of the proposed Article 4(2) Directions began on the 14<sup>th</sup> February 2020 and ended on 13<sup>th</sup> March 2020; meeting the minimum statutory requirement for such consultation. Eight comments were received and they are available to view in detail in Appendix A of this report.

The majority of the responses received were either seeking factual amendments to addresses, making supportive statements or seeking clarification of the process and its implications. There was one written objections to the proposed Article 4(2) Direction at The Shrubbery.

The objection notes that there was a lack of consultation, the process is inappropriate and wrong in law, it detrimentally affects civil liberties and is impractical and unreasonable. Although an objection has been raised it is considered that the process has been done within the requirements of the law and consultation has been appropriate. The requirements of the article 4(2) direction has been based on the Conservation Area Appraisal, it is an established approach, which will enable the Council to undertake its duty to preserve and enhance this national designation.

Following the consultation and consideration of the comments, no amendments are proposed. Appendices B, C and D set out the Article 4(2) Directions that the Council is seeking to formally confirm.

The Council has to formally confirm the Directions within six months from the date the consultation commenced (therefore formal confirmation is required by 13<sup>th</sup> August 2020). If the authority does formally confirm them, it must give notice of the confirmation in the same way that it notified the making of the Order, i.e. letters notifying each property and a local press advert. If the authority does not formally confirm the Directions within the six months they will lapse and cease to exist.

## Financial Summary

There is a financial cost associated with the notification process, mainly the cost of advertising in the South Wales Argus, plus the cost of posting notification letters to all affected properties.

## Risks

<b>Risk</b>	<b>Impact of Risk if it occurs* (H/M/L)</b>	<b>Probability of risk occurring (H/M/L)</b>	<b>What is the Council doing or what has it done to avoid the risk or reduce its effect</b>	<b>Who is responsible for dealing with the risk?</b>
Not formally confirming Article 4(2) Direction by the deadline date of	H	M/L	The formal confirmation of the Directions is an essential part of the process. Without confirmation, all the work to date is nullified. This is likely to cause public confusion and	Planning Policy & Cabinet Member Process

13 <sup>th</sup> August 2020.			<p>without the Directions in place, the special character of the Conservation Areas will be threatened.</p> <p>The Council is aiming to formally confirm the Directions within the timeframe through the Cabinet Member process.</p>	
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## Links to Council Policies and Priorities

Newport City Council has a Corporate Plan that runs to 2022. Its primary objective is 'improving people's lives'. It has four commitments; Resilient Communities, Thriving Cities, Modernised Council; and Aspirational People. The Article 4 (2) Directions will help deliver these commitments by ensuring development is undertaken which preserve and enhances the special character of the Conservation Areas which will build upon our cultural capital as well as provide positive and attractive spaces to work, live and visit.

## Options Available and considered

Approve the responses to the consultation and approve confirmation of the Article 4 (2) Direction of all three Conservation Areas.

Approve the responses to the consultation and approve confirmation of the Article 4 (2) Direction of one or more of the three Conservation Areas.

Approve/Modify the responses to the consultation and approve confirmation of the Article 4 (2) Direction of all three Conservation Areas

Do not approve the responses to the consultation and not approve confirmation of the Article 4 (2) Direction of all three Conservation Areas

## Preferred Option and Why

To approve the responses to the consultation and approve confirmation of the Article 4 (2) Direction for all three Conservation Areas. The process has been through consultation with those directly affected and the new Directions will help positively manage the special character of these Conservation Areas.

## Comments of Chief Financial Officer

Confirmation of the Article 4 (2) Direction will simply impose restrictions on development works on residential properties in these conservation areas and as such will have no financial impact. Certain costs have been incurred for advertising and postages but these have been met from existing budgets.

## Comments of Monitoring Officer

The proposed action is in accordance with the Council's statutory powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 to designate conservation areas and to serve an Article 4(2) Direction under the Town and Country Planning (General Permitted Development) Order 1995 to restrict the scope of permitted development rights within Conservation Areas. The Cabinet Member agreed in January 2020 to proposed alterations to the boundaries of the Caerleon, Stow Park and Shrubbery

Conservation Areas and agreed to make Article 4 Directions in relation to these areas. In accordance with Welsh Government Guidance, the proposed Article 4(2) Directions have been the subject of 21 days formal public consultation and eight responses were received, which are set out in the Appendix to this report. For the most part, the responses related to factual amendments and were supportive. There was only one substantive objection to the proposed Article 4 Direction for the Shrubbery conservation area, alleging that the process was inappropriate and wrong in law, it detrimentally affected civil liberties and was impractical and unreasonable. However, the Council has followed the correct statutory procedures form making the Directions and the reasons for restricting the scope of permitted development rights within these conservation areas is entirely consistent with the purpose of preserving or enhancing the special character of the areas. The effect of the Direction will have an impact on the rights of individual owners within the conservation areas, as it will require planning permission for previously authorised and permitted development. However, there is an entitlement to compensation if planning permission is refused for development that would previously have been permitted or if permission is granted with more restrictive conditions than those in the GPDO. Therefore, the Cabinet Member can lawfully decide to confirm the article 4(2) Direction, having regard to the consultation responses and objection received. The Council is required to confirm the Article 4(2) Directions within 6 months from the date when they were made.

## **Comments of Head of People and Business Change**

Maintaining conservation areas such as Caerleon, Stow Hill and the Shrubbery works towards improving the social, economic environmental and cultural well-being of Wales which is the overarching shared purpose of the Well-being of Future Generations (Wales) Act 2015.

The report writer has fully considered the Act in the appropriate section of the report and detailed how the proposal meets the five ways of working which are, looking to the long-term, prevention, taking an integrated approach to the way we work, working in a collaborative way and involving a diversity of the population.

From an HR perspective there are no staffing implication to this proposal.

## **Comments of Cabinet Member**

The Cabinet Member for Sustainable Development has been briefed on this report and is content for the Directions to be formally confirmed.

## **Comments of Ward Members**

### Cllr K Thomas:

It is appropriate to maintaining the historic areas of the city, including the areas which fall within the Stow Hill Ward, that the architectural features which reflect the unique nature of many of our most noteworthy buildings be protected into the future. I am sure this will be appreciated by future generations, as well as the citizens of Newport today.

### Cllr Wilcox:

As the Ward Councillors we are in unanimous agreement that the maintenance of the conservation area in a part of the Gaer Ward is essential and the formal approval notice should therefore be supported.”

### Cllr J Watkins:

Caerleon has many outstanding areas and I am happy to support the legislation above.

## **Local issues**

The Appraisals will directly affect those designated Conservation Areas in the Caerleon, Stow Hill, Allt Yr Yn and Gaer wards.

## **Scrutiny Committees**

This work was not taken to any Scrutiny Committee.

## **Equalities Impact Assessment and the Equalities Act 2010**

The LDP as a whole has been subjected to an Equalities Impact Assessment. The Conservation Area Appraisals, adopted as SPGs supplement the LDP. It is not considered necessary to have separate EIAs for every SPG. This introduction of Article 4(2) Directions is an action taken from those SPG.

## **Children and Families (Wales) Measure**

No consultation has taken place specifically with children and young people. Children and young people were eligible to comment on the Appraisals during the formal 8-week consultation. The subject areas of the Appraisals are not considered to be particularly relevant to children and young people.

## **Wellbeing of Future Generations (Wales) Act 2015**

The Well-being and Future Generations (Wales) Act seeks to improve the social, economic environmental and cultural well-being of Wales. Public bodies should ensure that decisions take into account the impact they could have on people living in Wales, in the future. The 5 main considerations are:

- Long term: This work aims to provide those persons who occupy or hold an interest in one of the four Conservation Areas with a clear understanding of the character and significance of each area and in turn the cultural value of their locality. This work also provides management objectives on how to maintain this significance and value for the future.
- Prevention: The initiation of these management proposals to protect and enhance the special character of the area will prevent the loss of these high valuable local assets. Early consideration of these aspects will ensure future generations can appreciate the value of their heritage.
- Integration: Improving the understanding of local level heritage designations will help integrate sustainable repairs and developments into the psyche of developers and the community. This in turn will make developments more attractive to residents and the community. The implementation of the Article 4(2) Directions will help interested parties understand their role in respecting and fulfilling their legislative role in preserving and enhancing Conservation Areas. Overall the process and guidance will meet the seven well-being goals. In particular, the work will conserve local culture and provide a sense of pride in a local area, which can be linked to the specific goals of a Wales of vibrant culture and thriving Welsh Language and a healthier Wales. The sense of community achieved through a collective understanding of the value of a space will help towards creating cohesive communities and a more equal community where the value is shared. Heritage is clearly linked to regeneration benefits and the value of properties within a conservation area is well known and is therefore contributing towards a prosperous Wales. The protecting of property with inherent carbon value, providing a framework to allow renewable energy projects where possible whilst protecting heritage value and the protection of trees and hedgerows also goes towards meeting the goals of creating a resilient Wales and a globally responsible Wales.
- Collaboration: The three proposed Article 4(2) Directions have been through a minimum 21-day public consultation. This consultation also included letters being sent to each property affected. The consultation has informed this proposal to confirm the directive and allowed collaboration with those interested stakeholders.
- Involvement: There was a small response to the consultation process. This follows a meaningful response to the Conservation Area Appraisals where the introduction of an Article 4 (2) Direction was recommended. The public involvement is key to them understanding their

role and implementing a process that seeks to preserve and enhance the four Conservation Areas.

The proposal is in line with the Council's well-being objectives published in March 2017. Specifically, these proposals contribute to the well-being objectives to promote economic growth and regeneration whilst protecting the environment.

### **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the confirmation of this legal process.

### **Consultation**

Comments received from the public consultation are set out in detail in Appendix A of this report.

### **Background Papers**

Cabinet Member for Sustainable Development, 23 January 2019, Endorsement of four conservation areas appraisals, including boundary changes and associated procedures:

<https://democracy.newport.gov.uk/documents/s17521/01%20Approve%20Boundary%20and%20adopt%204%20SPG.pdf>

Public information concerning each area is available to view and download at:

- [Caerleon Conservation Area](#)
- [Stow Park Conservation Area](#)
- [The Shrubbery Conservation Area](#)

## Appendix A – Consultation Responses to Article 4(2) notification

(14<sup>th</sup> February 2020 – 13<sup>th</sup> March 2020)

### All Three Conservation Areas (Caerleon, Stow Park and The Shrubbery)

Respondent	Comment	NCC Response
Glamorgan Gwent Archaeological Trust	You will recall our letter of October 2018 in response to the original consultation on the draft, in which we commented regarding the proposed alteration and wording, as well as our remit to your Authority. We note that our comments and recommendations for change have been incorporated into the current document. We have no further comment to make.	Noted.

### Caerleon Conservation Area

Respondent	Comment	NCC Response
Caerleon Civic Society	<p>Thank you for email regarding the outcome of the review of Caerleon Conservation Area. The Civic Society intends to consider the Council decision at its next meeting on March 9th and, immediately after this, forward any comments to you. It is acknowledged that individual property owners in the Conservation Area will have been consulted about the Article 4(2) Direction proposal, and the Society is urging its members, resident within the Conservation Area, to reply with their views.</p> <p>Has the Council taken any further decisions regarding the Caerleon Review? What is the current status of section 5 of the review? Apart from the conclusions relevant to the implementation of an Article 4 Direction, there were a number of other good ideas which deserve consideration especially in relation to the public domain.</p>	<p>No further comments have been received from the Civic Society. Their support in disseminating the process is welcomed.</p> <p>This is the first stage in progressing the review recommendations. There are resource implications for any future works and we would be happy to consider working with the Civic Society, or any other group, in bringing forward any of the other recommendations.</p>
Resident	With reference to your letter dated 14th. February, 2020 concerning designated Conservation Area, please be advised that 25+ years ago, I was informed by Newport Borough Council that my home would no longer be allocated number 43 Goldcroft Common but would instead be registered solely with the name of	The Gazetteer showed the property as No. 43 Goldcroft Common at the time of serving the notice. The Street naming and numbering team have been informed of the comments and they will contact the respondent directly.

	the house similar to five other adjoining properties. This had arisen as some duplication of numbers of houses situated on the Goldcroft Common	
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**Stow Park Conservation Area**

<b>Respondent</b>	<b>Comment</b>	<b>NCC Response</b>
Resident	<p>While I welcome this change as it will help preserve the character of this important area I have a few queries which I hope you can help me with:</p> <ol style="list-style-type: none"> <li>1. In the notice sent under the TCP Act there are a large number of properties not listed within Schedule 1, for example, properties 1-5 and 7-12 on Caerau Crescent where we live. Is there a reason existing properties have been excluded from this schedule? This appears to place an unfair burden on those few properties that <i>have</i> been listed in Schedule 1. Take No.1 Caerau Crescent for example, although it has been converted into flats and the property is in a poor state of repair a large amount of period features still remain and the property positively contributes to the character of the area (i.e original sash windows)</li> <li>2. Can you confirm that retrospective planning permission will not be required for alterations that would previously have been covered by permitted development rights which pre date the introduction of the Article 4(2) Directive, for example installation of UPVC windows?</li> <li>3. Can you clarify the process regarding maintenance of boundary hedges? Will permission now be required to maintain (cut/trim) any boundary hedges facing the public highway? I'm assuming this would <i>not</i> class as an alteration to an "other means of enclosure" but clarification would be appreciated.</li> </ol>	<p>The support for the work is noted and welcomed.</p> <p>Each query has been responded to, further acknowledgement received.</p> <p><i>The responses were:</i></p> <ol style="list-style-type: none"> <li>1. <i>The Article 4(2) direction can only apply to dwelling houses. Those properties converted to flats, listed buildings or in commercial use do not have the same permitted development rights and therefore need to apply for permission in any case.</i></li> <li>2 <i>The Article 4(2) Direction only applies from the date of the notice. It does not apply retrospectively.</i></li> <li>3 <i>You are correct. The maintenance of hedges would not require permission, nor would maintenance of fences or walls. It is the removal/alteration of such boundary treatments that we wish to manage.</i></li> </ol>



Resident	I refer to a letter sent by Newport City Council 14th Feb 2020 to me at 46 Caerau Rd. Schedule 1 identifies Caerau Rd and just to advise that 46 (where I live) is listed but there is a property attached to us at the rear of the property numbered 46A. If we are in this area surely the property attaching us should be also?	No. 46 Caerau Road is set out within the schedule because our records show it as a single dwelling house. No. 46a is shown as a Guest House and Managers accommodation which does not benefit from these permitted development rights and therefore cannot be entered on the schedule.
Resident	Could we please note that 216 Stow Hill has planning permission as a business although not currently used so.	The legal use of the property is a matter to be confirmed. In order to clarify the legal use of the property a Lawful Development Certificate should be sought.

### The Shrubby Conservation Area

<b>Respondent</b>	<b>Comment</b>	<b>NCC Response</b>
Resident	<p>Thank you for your letter dated the 14 February 2020, the contents of which are noted.</p> <p>We strongly object to our property, 2 Oakfield Road, being included into The Shrubby designated conservation area.</p> <p>The objections are based on the following: -</p> <p>1. The people, including ourselves, who are affected by this decision were never consulted regarding this issue.</p> <p>2. To amend the boundaries of The Shrubby Conservation Area and adopt the Conservation Area Appraisals as supplementary planning guidelines is inappropriate and wrong in law.</p> <p>3. With regards to Schedule 2, this is draconian and is a contravention of articles 3, 6 and 8 of the ECHR as well of as the civil liberties of those affected by this decision. The restrictions the Council intends to apply to our property and those belonging to others are unlawful.</p>	<p>1. Specific letters explaining the consultation of the Conservation Area Appraisals were sent to each property within the Conservation Area boundary. This consultation was undertaken from 26/10/18 until 21/12/18, this included a public event (7/11/18 at the Civic Centre) that all properties (including 2 Oakfield Road) were invited to attend. In addition, a letter was sent to each property within the conservation area in February to inform those of the changes to the boundary and consultation of the Article 4(2) direction. A press notice was also placed in the local press and letters sent to each property on. Consultation has</p>

unreasonable, irrational and illegal especially as these properties are not listed.

Furthermore, 4 Oakfield Road has certain areas within it listed, and according to our knowledge the Beatties are able to extend their property and make alterations with no permission required at all. Only Mr and Mrs Beattie live at 4 Oakfield Road, which is one large house, **there are no flats on their property**. Therefore, 4 Oakfield Road should be included in the conservation area.

4. The planning obligations that are to be imposed do not serve a useful purpose and are not practicable nor feasible to implement. In effect, this policy means that every time a repair is to be carried out planning permission will be required. This renders the policy ridiculous and means there will be unnecessary red tape and paperwork created.

5. Initially the Council has stated no fees will be required for planning permission. However, with austerity and budget cuts, fees with inevitably be demanded and increased year upon year. Accordingly, people will have to pay for permission and then the repairs/upgrades so will be hit with a two-fold blow.

6. Furthermore, if an emergency repair is necessary, for instance damage to a roof caused by a storm we and the other property holders will need to make an Application for Planning Permission to the Council as slates, tiles, ridge cappings and facial etc will be under the purview of the Council. The Council takes time to decide planning applications. A decision could take weeks, if not months before the permission is granted. Also, what happens if permission is denied? This will result in an appeals process being followed. However, during the intervening time period will the Council be prepared to indemnify and insure our and other people's property? Will the Council pay for the resulting damage from a delay? The

occurred at the appropriate and required times and responses have been fully considered.

2. The requirement to appraise and update Conservation Area Appraisals is set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, section 69.

3. The Article 4(2) has been undertaken in line with legislative requirements and as such is a compliant process. Those properties included within the Article 4(2) direction are those that are known to be dwelling houses reflected in Council records. Not all properties are noted because by virtue of their use e.g. flats they do not have the permitted development rights afforded to them.

4. The provisions set out in the Article 4(2) direction are based on the recommendations of the Conservation Area Appraisal. It is clear that the requirement for planning permission is only for those works set out in schedule 2. Repairs and maintenance to properties does not fall into this category. There is a matter of judgement as to when something goes beyond repair but the Council will provide guidance for individual cases.

5. There are no fees attached to this

inability to swiftly deal with an Application would potentially open the floodgates for civil proceedings against the Council for damages. Court proceedings are extremely costly and just because a matter is decided in one court, does not necessarily mean there will not be appeals. This would waste precious financial resources of the Council, in an already uncertain volatile economic climate.

7. Another problem with policy relates to break ins and burglaries. If a thief or burglar breaks a person's windows and damages the frames, naturally any homeowner will immediately replace the frames and glass panes to re-secure and protect their home. Yet, under this scheme they would be prohibited from doing so. Instead they would have to apply to the Council for planning permission and have to wait for a decision for a significant period of time. This means a person's home is left unsecured and vulnerable to further attack. This is clearly an unintended consequence of the policy.

8. The implementation of this Schedule 2 feels like a violation of people's privacy and their rights to update and repair their property as they see fit. As a human being, how would you feel if we told you how to manage your home? Would you like unknown people interfering in your home life? So, the human element must be considered, which clearly this decision by the Council ignores.

9. We believe in the interest of justice, fairness and natural justice Schedule 2 and Article 4 (2) should not be implemented as it is extremely impracticable and not significant. Based on the aforementioned reasons set above, we believe our property (2 Oakfield Road) and the other properties detailed in your letter should not have the amended boundaries applied to them. Our home also contains an office, therefore our property should be excluded as it has a semi-commercial

process at present and there is no known work being undertaken to change this. The setting of fees is a matter for Welsh Government.

6. See previous comment (4)

7. See previous comment (4)

8. The effect of living and owning and property within a Conservation Area e.g. requiring consents not usually required outside of Conservation Areas is a well-established matter that has been in practice for decades. The objective of this work is to protect the special character of the conservation area, it is considered to be a fair and balanced approach.

9. The property on Oakfield Road has not been affected by the amended boundary i.e. it remains within the Conservation Area Boundary set in 1993. Our records show the property as residential but we can investigate the commercial nature of the use. If there is an approved commercial use at the property this would affect the permitted development rights at the property. Proposed works to facilitate reasonable adjustments may already require planning permission to be sought depending on the nature of the proposal. The works set out in Schedule 2 are considered

	<p>element and a member of our family is disabled. Finally, the disability component means in the event that reasonable adjustments renovations are needed we cannot erect, renew, alter or demolish a gate, fence, wall etc without planning which is unfair.</p>	<p>appropriate and necessary to preserve and enhance the special character of the area.</p>
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## **Appendix B – Article 4(2) Direction for Caerleon Conservation Area**



Caerleon  
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## **Appendix C – Article 4(2) Direction for Stow Park Conservation Area**



Stow Park  
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## **Appendix D – Article 4(2) Direction for The Shrubbery Conservation Area**



The Shrubbery  
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