

**LOCAL LIST OF BUILDINGS OF ARCHITECTURAL OR HISTORIC INTEREST - ARTICLE 4 DIRECTIONS**

**TRANSPORT & STRATEGIC PLANNING (CLLR. DAN DE'ATH)**

**AGENDA ITEM: 10**

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**Reasons for this Report**

1. To seek approval of a first phase review of the Cardiff Local List of Buildings of Architectural or Historic Interest.
2. To revise the arrangements for the making and confirmation of Article 4 directions restricting permitted development rights.
3. To note the use of Urgency Action powers with regard to the Immediate Article 4 Direction issued in respect of the Rompney Castle, Wentloog Road, Rumney.

**Background**

4. In shaping how the city is developed, Stronger Fairer Greener commits the Council to '*protect and celebrate local buildings such as pubs, community spaces and music venues – particularly those rich in the city's working-class history – by strengthening our planning regulations and continuing to lobby the Welsh Government for stronger powers*'. The Local List will play a key part in the recognition and protection of these assets.
5. Planning Policy Wales (para 6.1.29, Feb 2021) sets out that planning authorities may develop lists of historic assets of special local interest, that do not have statutory protection, but that make an important contribution to local distinctiveness and have the potential to contribute to public knowledge.
6. The existing Local List of Buildings of Merit contains 202 entries, some of which cover several grouped buildings. The list was approved by Planning Committee in November 1997, with 323 buildings identified at that time. The list has not been maintained or comprehensively reviewed over the last 26 years, although around one third of those buildings have since been listed by Cadw, giving them statutory protection.

7. Due to the relative lack of national planning controls afforded to local listing, some buildings have unfortunately been significantly altered, or in extreme cases demolished. The list therefore requires revision to accommodate these changes, include new additions and to bring in new controls over demolition and alteration where applicable.

## Issues

### Existing Planning Policy and Regulations

8. Unlike Listed Buildings, buildings on the local list are not subject to any additional planning controls over alteration or demolition. The status simply means that when planning applications are assessed, the building's special local architectural or historical interest can be taken into consideration before making a decision.
9. Adopted Cardiff Local Development Plan Policy EN9 notes that development will only be permitted where it can be demonstrated that it preserves or enhances a locally listed building's architectural quality, historic and cultural significance, character, integrity and/or setting.
10. Notwithstanding this policy, some types of development benefit from what are commonly called 'permitted development rights'. These are set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ('GPDO'). For example, Part 31 of Schedule 2 of the Order permits demolition of a building.
11. Should an owner wish to demolish a building that is not listed by Cadw or within a conservation area, they must first issue a 'prior notification' of proposed demolition. In assessing such a proposal, the council may only control the method of demolition and the site restoration proposals. This means that the principle of demolition cannot be considered.
12. Where a Local Planning Authority (LPA) considers it expedient that any development described in any Part of Schedule 2 to the GPDO 1995 should not be carried out unless express planning permission is obtained, it can make a direction under Article 4 of this legislation to withdraw permitted development rights to reflect or respond to local circumstances if there is reliable evidence to suggest that such rights could damage an "interest of acknowledged importance". The procedure for making Article 4 directions was simplified in October 2022, meaning that LPAs can now make such directions without requiring confirmation from Welsh Ministers.
13. Article 4 directions enable the LPA to have some planning control over the proposed development and ensure that appropriate consideration is given to a building's potential for re-use or incorporation into any new development. It does not prohibit development for example, it does not mean that no buildings will ever be demolished, however it is likely that demolition would only be permitted in exceptional circumstances, for example where the public benefits of such demolition and/or redevelopment would materially outweigh the harm caused by it. Policy

and guidance within the forthcoming Replacement LDP (2021-2036) will add detail.

#### Planning Regulations and Public Houses

14. Unlike in England, there is currently no Welsh Policy or Regulation against which to consider the demolition or change of use of pubs. In May 2017, Regulations in England were changed to remove all permitted development rights from buildings in use as pubs, including demolition.
15. The (English) GPDO was amended again in September 2020 when pubs were made *Sui Generis* (in a class of their own) in planning terms. This excludes them from all forms of permitted development. This is not the case in Wales, where they remain as A3 (food and drink) with automatic change of use permitted to A1 (shops) or A2 (financial services) uses.
16. It is noted that currently 57 pubs in Cardiff are Grade II Listed (or above). However, while this protects their special architectural or historic interest, it does not protect their use. This will also be the case for buildings identified for local listing.

#### Buildings of Local Interest within Existing Conservation Areas

17. Cardiff has 27 conservation areas, within which conservation area consent (CAC) is required to demolish most buildings (those with a volume greater than 115m<sup>3</sup>). Given that demolition is already within the Council's planning control, it is not proposed to *locally list* buildings or issue Article 4 directions for buildings where that building makes a 'positive' contribution to the character or appearance of a conservation area, as demolition can be resisted on such grounds.
18. However, where an individual building is considered to make a 'neutral' contribution to the character of a conservation area, but merits local listing individually, it is intended that they will be proposed for local listing and Article 4 directions. This is because conservation area designation protects overall special quality of an area, so consideration of individual merit would not be material to the determination of a Conservation Area Consent application for demolition. These instances are likely to be rare.

#### Compilation and Consultation on the Revised Local List

17. Cadw guidance 'Managing Lists of Historic Assets of Special Local Interest in Wales' (May 2017) notes that local lists should be based on clear criteria, sound local evidence and consultation. The document states that local listing is *'important because it provides the base for local planning authorities to develop policies for their protection and enhancement. This means that local planning authorities can manage change through the planning system so that local historic assets continue to contribute to the vitality of the area.'*
18. Cadw note that consultation is a fundamental element to the success of local listing in that it *'provides an opportunity for a community to get*

*involved in the identification of historic assets of special local interest and in caring for them appropriately’.*

19. Eight local listing selection criteria have been developed to enable the identification and assessment of buildings and structures for potential inclusion. These are as follows:

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|------------------------------|---|
| 1) Aesthetic or Design Merit | Historic assets of importance to the locality or region for the interest of their design, decoration or craftsmanship, including well-preserved examples of locally representative building types or styles, or locally distinctive techniques of construction or use of materials.   |
| 2) Historic Interest         | Historic assets of all types which illustrate important aspects of the past life of the region or locality, particularly its social, economic, or cultural history.   |
| 3) Historical Association    | Historic assets of all types which have close historical association with people, events or movements important to the region or locality. Key works by distinguished or notable architects.  |
| 4) Landmark Status           | (a) Buildings which contribute significantly to townscape appearance e.g., pubs, churches, factories, cinemas, banks, etc.<br>(b) Buildings that are a focal point of social or visual interest (e.g. prominent corner sites).  |
| 5) Group Value               | Historic assets of all types which have a clear visual, design or historical relationship, or which make a positive contribution to the setting of other historic assets, or to the character of a settlement.<br>(a) Groups which as a whole have a unified architectural or historic value to the local area.<br>(b) Terraces, enclosing buildings (surrounding squares etc.), uniform rows etc.  |
| 6) Social and Communal Value | Historic assets which have social value as a source of local distinctiveness or social interaction; assets that contribute to local identity or collective memory; assets that have spiritual value, or symbolic significance. Such buildings may include churches, schools, village and town halls, chapels, public houses, memorials, places of employment and workhouses, which formed a focal point or key social role in the historical development of the area. |

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|           | Given their particularly unique contribution to collective memory, public houses (or purpose-built former pubs) will be prioritised for local listing where they also have both historic (generally pre-WWII) and architectural interest.  |
| 7) Age    | Buildings surviving from the earliest phases of development (in Cardiff's case prior to c.1875) and early 20th suburban development and surviving in anything like their original form. Superficial alterations which may be reversed in the future, e.g., reinstatement of timber windows, will not preclude inclusion on the list. |
| 8) Rarity | Historic assets that provide rare surviving evidence of a particular aspect of the history and development of the locality.  |

20. With the commitment within *Stronger Fairer Greener* in mind, an initial review of locally significant public houses, former hotels and members' clubs has been undertaken.
21. It is proposed to undertake consultation on this first thematic phase of the local list review in late 2023. Ward Councillors will be specifically invited to make observations and to propose other buildings for consideration. The results of the consultation will be presented to Cabinet for approval in 2024.
22. Subject to future Cabinet approval, it is proposed to undertake a full review of the Local List in 2024-25, using experience gained from the first phase to guide the process. In addition, Cadw have informally stated that they are exploring grant funding opportunities to enable LPAs to undertake local listing reviews.
23. When the full review is completed, it is likely that an expert panel will be created to make decisions on future building nominations. Proposals relating to this will form part of future Cabinet recommendations.

#### Cases of Urgency

24. The issue of protection for local heritage assets has been well-publicised and debated at national level more than once. Proposals involving the loss of historic buildings across Wales and within Cardiff have generated significant opposition in recent years. Local cases involving former public houses include The Vulcan (since relocated to St Fagans National History Museum), The Roath Park, Poets Corner, The Grosvenor Hotel (later retained) and The Gower, with other characterful buildings lost such as College Buildings Splott and Roath Laundry. Each of these buildings was put forward for assessment by Cadw for statutory listing, however the requests were denied. It should be noted that none of these buildings were on the existing Local List compiled in 1997. The lack of control over

demolition afforded to Planning Committee and its delegated functions has led to well-publicised concern and frustration.

25. To address these concerns and to bring known demolition proposals within control of the Council, a procedure is also available to the Council under the recently simplified statutory procedures to make an immediate Article 4 direction if a LPA wants to restrict certain Permitted Development Rights quickly in respect of buildings which are of particular local interest within the street scene, as assessed against the criteria identified above, and where intent to demolish is known (e.g. through planning applications or application for Prior Notification of Demolition (PND)).
26. On 27<sup>th</sup> July 2023, an application was received (ref. [23/01746/PRNO](#)) which proposed the demolition of The Rompney Castle, Wentloog Road, Rumney Cardiff CF3 3EB. This followed the refusal of planning application ref. [22/00094/MJR](#) in April 2022 which proposed demolition and redevelopment of the site for 26 no. one-bedroom apartments and 1no. commercial unit, and which was refused on a number of grounds, including that: -
  1. *The proposed development requires the demolition of a historic building of some character, that is of considerable significance to the local community and the loss of the building and land will cause unacceptable harm to the wellbeing of the local community and to local character and distinctiveness, contrary to guidance in Planning Policy Wales 11, Policy KP5 of the adopted Cardiff Local Development Plan 2006-2026, and the Council's approved Supplementary Planning Guidance 'Planning for Health and Well-being'.*
27. In response to the above PND application, and given the immediate threat to the future of the building which is considered to meet the criteria for 'local listing', an Article 4 Direction was issued on 6<sup>th</sup> September 2023 under Urgency Action powers to prevent the demolition of the building in question without first obtaining planning permission (i.e. withdrawing permitted development rights under Part 31).
28. Having regard to the need to protect buildings of local importance when under immediate threat (whether through a planning application or a PND application), it is recommended that Cabinet confirm that the power to issue Article 4 Directions can be delegated to the Head of Planning in future cases.

### **Reason for Recommendations**

29. To enable Cabinet to approve local listing selection criteria, and to authorise consultation on the first phase review of the local list.
30. To delegate authority to the Head of Planning to serve and confirm any future Immediate and Non-Immediate Article 4 directions in consultation with the relevant cabinet member, and/or Director of Legal Services, s.151 officer if considered appropriate by the Head of Planning.

31. To report the use of Urgency Action powers to issue an Article 4 Direction in respect of the Rompney Castle, Wentloog Road, Rumney Cardiff CF3 3EB, as set out in the delegated report attached in the background papers.

### **Financial Implications**

32. Whilst there are no direct financial implications arising from the proposed review of the Cardiff Local List, Cabinet will need to ensure that they receive full information and a detailed understanding of any potential future financial impact to the Council.
33. This will include consideration of the potential scenarios where financial liabilities will rest with the Council either due to Council ownership of a building, as a result of any decision by the Planning Committee or projects undertaken by the Council itself which may be impacted by any decision making in this regard.
34. The management of any resulting future applications will be met from within existing resources and, where there are pressures, these will need to be contained within the overall budget for Planning.

### **Legal Implications**

#### Local list

35. The existing local listings are registered as a Local Land Charge, meaning that the designation is recorded on the Local Land Charges register, which is a public register maintained by the local authority. The identification of locally listed buildings is typically made when transferring ownership (conveyancing) following a request for a local search. All new designations will also be registered in this way. Designation information will also be accessible on the Council's website and iShare mapping site.
36. Section 35 of the Historic Environment (Wales) Act 2016 requires adopted lists of historic assets of special local interest to be added to the local historic environment record (HER), which is the primary source of information about the historic environment that should be used for planning decisions and is publicly available.
37. Local listing is considered as a 'material planning consideration' that can be included in the decision-making process of any application affecting the property.

#### Article 4 directions

38. The Town and Country Planning (General Permitted Development) Order 1995 prescribes in its Schedules those types of development for which permission is granted without having to make an application for planning permission. Article 4 of that GPDO enables directions to be made to restrict certain of those permitted development rights. The General Permitted Development Order 2022 amended Article 4 of the GPDO The procedure

for making such a direction is set out in Schedule 2A to the Order. It also removes the need for Welsh Ministers to confirm directions before they can take effect but in most cases a LPA must after confirming an article 4 direction, give notice to the Welsh Ministers of the confirmation and provide a copy of the confirmed direction.

39. Following the making of an Article 4 direction, the LPA must, as soon as practicable give notice by local advertisement and comply with the notification and publication provisions prescribed in Schedule 2A of the Order, specifying a minimum period of 21 days, stating the date on which that period begins, for representations to be made to the LPA (*paragraph 1(4)(e), Schedule 2A, GPDO 1995*). Any representation received by the LPA during this period must be taken into account by the LPA in deciding whether to confirm the Article 4 direction (*paragraph 1(8), Schedule 2A, GPDO 1995*).
40. There are two types of direction. The first is a direction without immediate effect, in which permitted development rights are only removed upon confirmation of the direction. This non immediate Article 4 direction will come into effect following its confirmation by the LPA following publicity and taking into account representations received during public consultation. However in certain circumstances an Article 4 direction can come into effect immediately.
41. The second type of direction is the Immediate Article 4 directions, in which permitted development rights are removed with immediate effect but must be confirmed by the LPA following public consultation within 6 months, or else the direction will lapse. Directions with immediate effect can be made where certain development would be prejudicial to the proper planning of the area or constitute a threat to the amenities of the area. The Immediate Article 4 direction takes effect on the date the notice of the direction is served on the owners or occupiers (or first published or displayed where service is considered impracticable).
42. The effect of an Article 4 direction (which can cover a single building, street, site or area) is that an application for express planning permission has to be made for those development proposals excluded under the direction (no planning application fee is payable) which will be considered on its merits, the LPA will assess the proposed development in the light of policies in its development plan documents and consider any other factors that are material. If the permission is refused or granted subject to conditions other than those conditions imposed by Schedule 2 to the GPDO 1995, the landowner is entitled to claim compensation for abortive expenditure and any loss or damage caused by the loss of rights. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works (*section 107, Town and Country Planning Act 1990* ('TCPA')).
43. Where directions are made with immediate effect or with less than 12 months notice Section 108(2A) of the TCPA 1990 provides that compensation is only payable if a planning application for certain



development formerly permitted by the [GPDO 1995](#) is made within 12 months of the Article 4 direction taking effect. The onus is on the claimant to prove financial loss in relation to applications which are subsequently refused or where permission is granted subject to conditions. No compensation for the withdrawal of certain permitted development rights is payable if an LPA gives notice of the withdrawal between 12 months and 24 months in advance.

44. A claim for compensation must be made in writing and must be served within 12 months from the date of the decision in respect of which the claim is made ([regulation 12, Town and Country Planning General Regulations 1992 \(SI 1992/1492\)](#)).

#### Equality Act 2010

45. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex, (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation, (i) Religion or belief – including lack of belief.
46. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage ('the Socio-Economic Duty' imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers ([WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 \(gov.wales\)](#)) and must be able to demonstrate how it has discharged its duty.
47. The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

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

48. The Well-being of Future Generations (Wales) Act 2015 84. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The wellbeing objectives are set out in Cardiff's Corporate Plan 2020 -23.
49. When exercising its functions, the Council is required to take all reasonable steps to meet its wellbeing objectives. This means that the decision

makers should consider how the proposed decision will contribute towards meeting the wellbeing objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

50. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them.

51. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible online using the link below:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang>

#### Welsh Language

52. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language, the report and Equality Impact Assessment deals with all these obligations. The Council has to consider the Well-being of Future Generations (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.

#### **HR Implications**

53. There are no HR implications arising from this report.

#### **Property Implications**

54. The Council owns property that is currently on, or may form part of a new, local List, and any such buildings identified for inclusion on the list would be subject to the same level of control as all other buildings on the local list.

55. Any Article 4 direction served on a Council-owned building would preclude demolition under Part 31 of the GPDO 1995 (as amended for Wales), however local listing, or the service of an Article 4 direction, does not prevent demolition. Instead, it brings demolition under planning control,

allowing a conclusion to be reached over the acceptability of any future development proposal involving demolition.

56. While local listing and any associated Article 4 direction could impact upon future disposals / valuations or redevelopment proposals, as for all developers/owners it remains open to the Council to put forward proposals where the public benefits of a scheme are considered to outweigh the importance of retaining the building in question.

## RECOMMENDATIONS

Cabinet is recommended to:

1. Approve the local listing selection criteria (as set out at paragraph 19) and to undertake consultation on the first phase review of the local list, the results of which will be reported back to Cabinet for approval.
2. delegate authority to the Head of Planning to make, serve and confirm any future Immediate and Non-Immediate Article 4 directions in consultation with the relevant Cabinet Member, and/or Director of Legal Services, Section 151 officer if considered appropriate by the Head of Planning.
3. Note the use of Urgency Action powers to issue an Article 4 direction in respect of the Rompney Castle, Wentloog Road, Rumney Cardiff CF3 3EB.

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| <b>SENIOR RESPONSIBLE OFFICER</b> | <b>Andrew Gregory</b><br>Director Planning, Transport & Environment |
|                                   | 15 September 2023   |

*The following appendices are attached:*

- Appendix 1 – Officer Decision Report – Rompney Castle Article 4 Direction
- Appendix 2 – Rompney Castle Article 4 Direction