

Planning Reform Necessary to Expedite the Delivery of Housing

Prepared for:

Irish Home Builders Association

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Tuesday, 15 December 2020

Dear James

RE: TOWN PLANNING REVIEW REPORT FOR THE IRISH THE IRISH HOME BUILDERS ASSOCIATION

1.0 INTRODUCTION

1.1 Town Planning's role in expediting the delivery of housing

This Report provides a high-level review of some of the key elements of town planning reform required to expedite the delivery of residential development.

The Report is provided against the backdrop of the debate concerning the root-causes of delays in the delivery of housing.

There are encouraging signs of redressing the issue - such as the recent Departmental invitation to key private sector organisations to form part of the wider SHD Review (and replacement process) - but more consultation – and ultimately collaboration - is required.

Such debate on housing delay and lack of supply – often politicised - includes perceptions of land hoarding, developer delay, discussions on the introduction of “use-it-or-lose-it” time restrictions, the reintroduction of a Windfall Tax levy, the issue of project viability in the context of increased residential densities, and a significant growth in housing-related Judicial Review proceedings.

The Report also addresses the interface between the delivery of residential development on public- and private-sector lands.

¹ In the publication *Regional Demographics and Structural Housing Demand at a County Level* (Research Series Number 111, 14 December 2020), the ESRI estimates *inter alia* that:

“As international migration is the key driver of population growth in Ireland, additional scenarios are explored that incorporate higher and lower international migration assumptions than in the ‘business as usual’

Reconciliation of those competing factors is not a zero-sum game.

In summary, this Report identifies the need for certainty and speed in the delivery of viable housing schemes, whilst respecting the limitations of planning and the need to protect third party rights.

We set out a series of recommendations in Section 7.0 below, following consideration of some of the key housing-related town planning issues arising.

1.2 Housing Delivery Issues against a backdrop of growing demand

It is projected that Ireland’s population will continue to grow, with the average household size falling. Ireland has some 1.75m residential units, with an additional 1 million more required to 2050. It is commonly agreed that we need to build on average 36,000 No. homes annually across all tenure types for the next two decades. (Different figures are cited as the ultimate quantum, but the issue remains.)¹

There is a misconception that the rental market is in some way detrimental for homeowners; however, Ireland is now a much more dynamic society than ever before.

The inclusion and provision of apartment schemes that are targeted at the rental market offer choice in tenure. That provision is consistent with other international markets where large multinationals operate, offering both the domestic and international workforce the opportunity to rent in the short to medium term.

1.3 This Document promotes a “Root-and-Branch” Planning Review

The first part of the preamble to the *Planning and Development Act 2000* (as amended) states *inter alia* that it is “an Act to provide, in the interests of the common good, for proper planning and sustainable development including the provision of housing...”.

It promotes a proactive rather than reactive approach to the delivery of housing. The reality is, unfortunately, somewhat different.

scenario. In a high migration scenario, with net immigration of +30,000 each year, the total population would reach almost 6 million people by 2040. Conversely in a low international migration scenario, where net immigration drops to +5,000 over the short run before adjusting back to the levels in the ‘business as usual’ scenario over the medium term, the population would stand at around 5.554 million in 2040.”



The planning system needs fundamental review with a “root-and-branch” review, which Action Item 3.10 of *Rebuilding Ireland* committed to undertake by Q1 2017, yet to occur.²

1.4 This Overview Examines the issue of Housing Delivery Issued from Five Perspectives

This Report examines five perspectives on the delivery of housing, namely:

1. Review of State-owned lands, including how many units can be delivered.
- 2.
3. Planning permissions granted annually for a development of 10 or more units.
4. Implications of the current density guidelines and the effect they have on available serviced lands where planning permission is being sought and brought to the market.
5. Timeline taken to go through the planning system and the impact this is having on deliverability and viability.
6. Commentary on whether the Planning System is fit-for-purpose?

The Report concludes with a series of recommendations in both the short and medium term to support increased delivery and affordable homes.

² At the heart of those recommendations is the root-and-branch reform of the planning system to make it fit for purpose.

Planning is not the principal case of delay, but, despite protestations to the contrary, is a major contributing factor. Delay constrains supply, ultimately leading to higher house prices.

2.0 REVIEW OF STATE-OWNED LANDS DEMONSTRATES THE MAJOR ROLE (80%) PLAYED BY THE PRIVATE SECTOR

2.1 Importance of Accurate Data Sets and of Public-Private Sector Partnership

Estimates of the potential residential-delivery capacity of State-owned lands is purely speculative.

No-one can predict it with any certainty because the underlying data analysis has not been undertaken.

Attempts by Central Government to establish a single database has proven difficult given the number of State bodies involved (from local government to the Office of Public Works), and other bodies in which the State has an interest, exacerbated by the reluctance of some bodies to identify how much lands they respectively control.

Several disparate data sets exist – from Geohive operated by the OPW (which identifies properties, but not ownership) to Land Direct to the OPW's Property Mapping Register.

In addition, for some time, ESB Networks and the Central Statistics Office (CSO) have been in discussions to provide additional, more granular data to quantify the total number of new residential units being provided. Such units include one-off houses, multi-unit scheme developments and apartments as well as some re-connections to the grid where properties unoccupied for over two years are brought back into use.

These issues cumulatively illustrate two underlying issues and uncertainties that must be clarified:

1. How much land does the State control?
2. How many residential units are being delivered annually by type?

It is essential to quantify those figures for initiatives to be meaningful.

2.2 The Role of the LDA is very important but account must be made for the complementary role of the private sector housebuilder

The general scheme of the *Land Development Agency Bill 2019* was approved by Government in July 2019 to establish the Land Development Agency (LDA) on a legislative basis. However, the LDA currently operates under secondary legislation.

We welcome the commitment in the *Programme for Government* to use primary legislation to expedite the formal establishment of the Land Development Agency (the LDA).

2.2.1 The lack of Reliable Data will impede the LDA

The LDA has two main functions:

1. To coordinate appropriate State lands for regeneration and development, opening key sites that are not being used effectively for housing delivery.
2. Driving strategic land assembly, working with both public and private sector landowners to smooth out peaks and troughs of land supply, stabilising land values and delivering increased affordability.

However, the underlying data set of public lands is not complete.

The LDA must be given the power and resources to identify all State-owned lands under a set of agreed definitions and parameters and afforded full cooperation by local authorities and other State bodies.

This should be done as a matter of urgency as many of the State-owned lands will offer the opportunity to develop brownfield sites, which is consistent with the *National Development Plan*.

The LDA will need full mapping and GIS resources to expedite that important function.

In the interim, extreme caution must be applied in interpreting the projected capability of State-owned lands to deliver housing.

Apart from An Bord Pleanála, Ireland has 31 No. planning authorities.

The Authorities should be mandated to undertake a review of all land in their respective authority with a designed period and infrastructural capacity, impediments to housing delivery etc.

Such a study should be brought into a single control mechanism and reviewed annually.

The public sector too must hold itself to account – and would do so if the Minister introduced a 'use-it-or-lose-it' approach to the delivery of council owned lands to deliver housing.

This will of course necessitate adequate funding and resources, more than LIHAF funding, which has restrictions on applicability.

In England, for example, local authorities are held to account where housing delivery targets are not met: introduced in 2018, the housing delivery test applies sanctions to all local planning authorities that, in the three years up to the preceding April, see fewer than 95 per cent of the new homes required in their area delivered, with the severity of the sanction varying according to the extent of the underperformance.³

2.3 The 80:20 Divide

In launching the Land Development Agency on 13 September 2018, the Government projected that the Agency would build 150,000 No. new homes over 20 years with an initial portfolio of sites capable of delivering up to 3,000 No. homes.

The immediate focus was on managing the state's own lands to develop new homes and to identify relevant public lands and appraise their potential for development.

Taking the working assumption of the need for 36,000 No. new dwellings per annum, the LDA's projection of 150,000 No. new homes over 20 years equates to some 7,500 No. per annum or 19.7% of the annual average requirements.

Therefore, it will continue to fall largely on the private sector house builder to provide 80% of stock required, unless local authorities recommence the development of social housing.

There have been calls for the exclusive provision of public housing, social housing and cost rental housing on public lands.

However, given the scale of some of those sites it would lead to large scale social housing schemes, at odds with best practice in terms of integrated communities of private and public sector housing:

1. The Poolbeg West SDZ Planning Scheme provides for some 3,500 No. residential units of which 25% are social and affordable (greater than the conventional 10% Part V requirement).

³ See "Planning Insight Report: The Councils facing Housing Delivery Test Sanctions in 2020" (*Planning Resource*, 14 December 2020).

2. Similarly, the Central Mental Hospital site at Dundrum could accommodate in the order of 1,200 units. As announced recently, the scheme could have a 30-40% social and affordable housing component.

It is important that such schemes have mixed tenure rather than exclusive subsidised housing.

3.0 PLANNING PERMISSION FOR TEN OR MORE UNITS

3.1 “Residential” as an Element of Development: Growth in the Number of Apartments, but One-off Houses still a Factor

Ten units is the quantum at which provision must be made for Part V (social/affordable housing).

In this Section we:

1. Highlight the major contribution of “residential” to all property types.
2. Acknowledge the positive role of the Strategic Housing Development (SHD) initiative but highlight the need for improvement.

The Residential Use Class constitutes the largest proportion of all applications lodged annually, but single-digit housing provision has been a factor for some time.

An Bord Pleanála’s *Annual Report 2019* reveals that of the 2,076 No. appeals received in that year, some 1,350 No. (or 65%) were “residential” in nature, and 87 No. (or 4.2%) were “mixed development” (including residential).

With an average appeal-determination period of 18 weeks - which is an “objective” rather than an “obligation” – this highlights the effect of further delays.

The CSO produces several infographics annually, which illustrate graphically the growth in multi-unit development applications as a factor of applications overall.

Figures 2.1 to 2.6, respectively, show:

1. Planning Permission Q4 2014.
2. Planning Permission Q4 2015.
3. Planning Permission Q4 2016.
4. Planning Permission Q4 2017.
5. Planning Permission Q4 2018.
6. Planning Permission Q4 2019.

The statistics demonstrate several factors, including the high number of one-off houses – generally a third of all residential permissions annually up until 2018 when that cohort formed a quarter of all dwelling permitted.

Similarly, more recent statistics demonstrate the growth in apartment numbers – a doubling from 2018 from 9,138 No. to 20,582 No., but with multi-development house numbers down by 3.0%.

Three counties accounted for 80% of apartment units granted in 2019.

In 2018, some 60% of apartment units granted were in Dublin, and five counties accounted for 50% of the permissions granted.

Much of the growth in apartment numbers is due to the positive introduction of the Strategic Housing Development (SHD) initiative, discussed below.



Figure 2.1: Infographic illustrating planning permissions, Q4, 2014. (Source: www.cso.ie.)



Figure 2.2: Infographic illustrating planning permissions, Q4, 2015. (Source: www.cso.ie.)



Figure 2.3: Infographic illustrating planning permissions, Q4, 2016. (Source: www.cso.ie.)



Figure 2.4: Infographic illustrating planning permissions, Q4, 2017. (Source: www.cso.ie.)



Figure 2.5: Infographic illustrating planning permissions, Q4, 2018. (Source: www.cso.ie.)

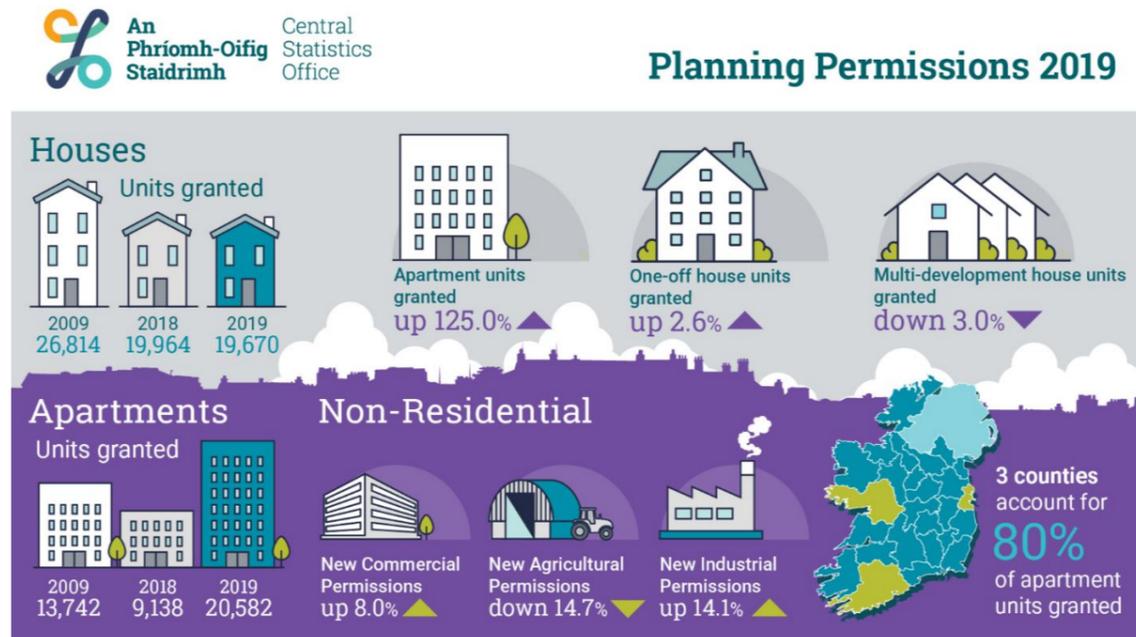


Figure 2.6: Infographic illustrating planning permissions, Q4, 2019. (Source: www.cso.ie.)

3.2 The Importance of Strategic Housing Development (SHD)

3.2.1 An Effective Mechanism for the Delivery of Housing

The introduction of Strategic Housing Development (SHD) legislation in July 2017 under the *Planning and Development (Housing) and Residential Tenancies Act 2016* has proven effective in securing permission for residential schemes of 100+ No. units.

The Strategic Housing Development initiative has proven a success overall yet is under sustained criticism from many parties due to perceptions of the stockpiling of permissions and a democratic deficit.

To counter-balance that, the Chairperson's Statement in An Bord Pleanála's *Annual Report and Accounts 2019* states that the SHD "has made a significant contribution to meeting the overall increasing demands for new homes under the Government's Rebuilding Ireland Action Plan for Housing and Homelessness." (ARA 2019, pg. 10.)

⁴ TPA analysis of SHD Decisions results in different statistics, albeit with a similar net point result. We calculate that some 238 No. SHD Applications have been determined. Excluding those subsequently quashed on foot of Judicial Review proceedings, the grant:refusal ratio was 78:22 by 8 December 2020.

In his Opening Statement to the Joint Oireachtas Committee on Housing, Planning and Local Government on Tuesday, 10 November 2020, the Deputy Chairperson of An Bord Pleanála (Paul Hyde) stated *inter alia* that in the little over three years since the SHD legislation had been introduced a total of 265 No. Applications have been decided, all but five within the 16-week mandatory timeline provided. (The five had oral hearings, which extends the mandatory timeline to 24 weeks.)

Of the 265 No. determined: 183 No. were to grant; 79 No. to refuse; with 3 No. withdrawn. That represents a 70:30 grant:refuse ratio.⁴

The Deputy Chairman noted that by 30 September 2020 the SHD process had resulted in permission for c. 40,000 No. residential units (29,000 No. apartments and 11,000 No. houses, with approximately 4,000 No. social houses incorporated) and a further 10,100 No student bedspaces permitted.

Many of those that were refused could have been considered for grant had ABP the mechanism to request additional information from the applicant and avoid the unnecessary delay and additional expense of needing to re-apply.

3.2.2 The propensity for and successful rate of judicial review proceedings must be addressed

What is neither understood nor appreciated, however, is the time schedule to prepare such applications prior to submitting the Application to An Bord Pleanála for determination.

The degree of supporting documentation submitted has grown exponentially – in part due to the forensic level of 'thoroughness' required to militate against subsequent Judicial Reviews on points of detail.

One of the first major housing-related actions of the Government must be finalisation of the legislation as it relates to Judicial Review.

The previous Government had committed to a review of JR proceedings in December 2019.

Judicial Review is a significant risk factor, with legislation as currently drafted facilitating ready access to the Courts, occasionally on innocuous non-planning related administrative issues rather than on the merits of otherwise individual schemes, with others going to the heart of the process itself.

Government will need to appreciate that the forensic level of detail being applied to a legislative rather than planning-related critique of some schemes will have a contagion effect on public sector schemes too.

In other words, several mooted road schemes currently in preparation will be put to the same level of scrutiny as private sector housing proposals are currently experiencing.

In addition, certain quarries currently supplying public sector schemes will come under increasing operational difficulty pending legislation to overcome Supreme Court challenge to the concept of substitute consent.

The most notable example of Judicial Review delay to a housing scheme is the challenge by Dublin City Council against An Bord Pleanála - two State authorities arguing in open court on interpretation of Strategic Housing Development legislation - in the case of an SHD Application in relation to City Block 2 of the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ). (Record No. 2020/469JR.)

Meanwhile, the delivery of homes is delayed, with ultimately greater costs to the purchaser.

Of the 238 No. SHD Decisions made to date 26 No. JR proceedings (excluding four duplicates) have been taken against SHD, of which: eight are pending; two have been withdrawn; and one refused.

Therefore, of the 16 No. determined, 15 No. have resulted in a quashed decision proving successful for Applicants against An Bord Pleanála as the Respondent. This represents 15:1 quash:refuse ratio.

These statistics include the JR proceedings by Dublin City Council against An Bord Pleanála.

In the last 14 months alone (allowing for eight weeks to instigate proceedings, plus the 12 months since the consultation process on Judicial Review was mooted), we calculate that some 22 No. (excluding the four second challenges) SHD-related JR proceedings have been undertaken. These affect some 8,343 No. residential units⁵ – some 23% of the 36,000 No. units that IHBA estimates are needed annually.

Of the 7,985 No. non-student units (in that total of 8,343 No.), some 799 No. or 10% would have been social housing units under Part V.

3.2.3 Challenging accusations of an anti-democratic process

Any Government decision to abandon SHD in the mistaken (and easily challenged) view that it is anti-democratic must be resisted for reasons including:

1. Third parties still have a five-week window to make submissions.
2. Such applications, unlike “conventional” ones, require the Scheme to be presented by the Council’s relevant planners to the Local Area Committee of the local Councillors. No other residential scheme has that requirement.
3. There is a strong partnership role for the Local Planning Authority.
4. Review of pre-SHD planning demonstrates that the granting or refusal by local authorities of planning permission for the development of larger housing developments would most likely be appealed to An Bord Pleanála.

An Bord Pleanála is the final arbiter of the planning merits of residential schemes: for conventional schemes if appealed; for SHD by default.

Therefore, the same party i.e. An Bord Pleanála – assesses both types of applications.

5. The required wording for SHD statutory newspaper and site notices requires the Applicant to advise third parties how to undertake Judicial Review. (This in our opinion must be curtailed.)

3.2.4 Commentary on the September 2019 review of SHD

Similarly, we welcome many, but question some, of the 22 No. recommendations of the *SHD Review Group Operation of the Strategic Housing Development process 2017-2019* (September 2019).

We consider that that document (and its recommendations) needs further review.

⁵ Those 22 No. proceedings’ have a total of 8,343 No. units (5,962 No. apartments; 1,884 No. houses; 358 No. student bed spaces; 84 No. shared accommodation units; 55 No. duplex / townhouses).

The following are of note:

1. Recommendation No. 1: we recommend that the SHD process be extended to December 2022, not 2021, especially given the COVID-related delays.
2. Recommendation No. 2: the “use-it-or-lose-it” provision is populist, without thorough review of the reasons for delay – including the State’s failure to enact the eight-week compliance-with-condition timetable. (See Section 23(4) of the *Planning and Development Act 2018*, the commencement of which has been delayed due to opposition by some County Chief Executives.) (See also Recommendation No. 17 below.)

(The Review refers to that “stick” approach as one “to incentivise” without considering the factors that delay delivery.)

3. Recommendation No. 5: we are pleased that the Minister did not seek to increase the threshold to 200 No. units.

However, we submit that for a mixed-use scheme, the quantum of commercial (or “other uses”) floorspace that can be included in an application - currently capped at 4,500 sq m – should be increased to say 50% equivalent (or half) of the corresponding total residential floor area.

4. Recommendation No. 6: we fundamentally disagree with the recommendation to remove SHD schemes from SDZs. How can one justify that taller developments are precluded in Dublin’s docklands?
5. Recommendation No. 7: agreed, in principle, but with reference to “at least” removed.
6. Recommendation No. 11: agreed, but delays by Irish Water must be eliminated.
7. Recommendation No. 13 (increasing the determination period from 16 to 18 weeks): accepted, if it improves the system.
8. Recommendation No. 17 (statutory time limit for compliance material): agreed, especially about the delay to the enactment of Section 23(4) of the *Planning and Development Act 2018* regarding compliance material.

3.2.5 Learning from the best practices of SHD Consultations

Whether or not SHD legislation is maintained and extended, the overall mechanism has led to many improvements in Applicant/Local Authority Board Inspector interaction.

For example, the prospective Applicant/Design Team “Section 247” pre-Application meetings with the local authority are much enhanced by the multi-disciplinary interaction at such meetings where representatives from other local authority departments such as roads, drainage and landscape also attend.

Similarly, the complementary launching of a bespoke project-specific website is also informative and useful, particularly during times of movement restriction during the Covid-19 pandemic.

4.0 IMPLICATIONS OF THE CURRENT DENSITY GUIDELINES AND THE EFFECT THEY HAVE ON AVAILABLE SERVICED LANDS WHERE PLANNING PERMISSION IS BEING SOUGHT AND BROUGHT TO THE MARKET

4.1 Bespoke versus Blanket Densities

The Board's treatment of SHD Applications - which is generally proactive and supportive – has the effect of increasing densities.

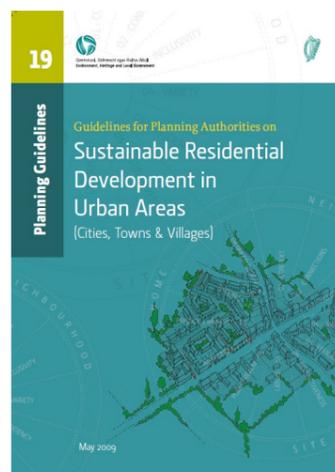
A criticism is that densities are promoted - say in suburban Galway or other areas that would be difficult to justify as viable - at rates at odds with the market.

The Board's density requirements are not specified in Guidelines *per se* - rather they have evolved.

High density suits more urban contexts.

A key issue is that of the imposition of more rigid Development Plan Standards. Examples include the insistence on 11m back gardens.

In May 2009, the (then) Department of Environment, Heritage and Local Government published the *Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities*.



For some sites – due to several factors such as location, the nature of their design and capital costs – developers may find it difficult to justify the development of apartment-based

schemes.

In such areas, the home builders and their agents might conclude that the most appropriate solution in terms of buildability and viability for certain sites is standard housing.

There is an urgent need for an holistic review of standards, covering a range of issues including: levels of appropriate density in the contexts of location and proximity to public transport corridors; private and public open space; parking; and, importantly, privacy.

4.1.1 Learning from Elsewhere

The issue of numerical standards – for example, for individual apartment sizes - must be addressed.

Attempts to debate standards frequently are met with accusations of the promotion of “shoe boxes”.

However, there is much to be learnt from more innovative practices in terms of density being undertaken in urban contexts such as Cambridge - with award-winning schemes being granted and built that would be at odds with Ireland's out-of-date planning development management standards.

Our approach to meeting the needs of families in terms of planning and design has not moved on. Through innovative design, private spaces can still be created for the homeowners yet achieve higher density.

The Guidelines are predicated on the efficient use of land, which is a scarce resource that should be used efficiently.

4.2 ABP's approach to density in the context of SHDs

Analysis of the 238 No. SHD Applications granted by 8 December by An Bord Pleanála demonstrates that of those refused, six were refused on the grounds (exclusively or cumulatively) of insufficient density:

1. ABP 300009: Trusky East, Bearna, Co. Galway – 20 dph on site of 7.2 hectares - insufficient density (and other reasons).
2. ABP 300558: Kill Hill/Earl's Court, Kill, Co. Kildare - 26 dph on site of 6.3 hectares -

insufficient density (and other reasons).

3. ABP 301961: Ballyleary, Great Island, Cobh, Co. Cork - 34 dph on site of 13.7 hectares – density not sufficiently high to provide for an acceptable efficiency in serviceable land usage considering public transport (and other reasons).
4. ABP 301371: Former Magee Barracks Site, Kildare (Town) - 34 dph on site of 11.4 hectares – density not high enough (and other reasons).
5. ABP 300731: Glenamuck Road, Enniskerry Road, Kilternan, Dublin 18 - 37 dph on site of 4.5 hectares – insufficient density (and other reasons).
6. ABP 302336: Golf Lane, Glenamuck Road South, Carrickmines, Dublin 18 - 139 dph on site of 2.60 hectares – the Inspector had recommended refusal on the grounds of the density being too low, but the Board disagreed, but refused it on the grounds of design.

The lowest permitted densities were ones of 23 dph on a site of 8.5 hectares (Rolestown, Co. Dublin) and 26 dph on a site of 5.76 hectares at Ballygaddy Road, Tuam, Co. Galway.

The Bearna site ultimately received permission with a density of 35 dph. The issue of a 35 dph “floor” needs reassessment.

We recommend that the issue be reviewed in a study to be commissioned with submissions from the public.

4.3 Studies on Density and Viability are required at State level to harness private sector initiatives

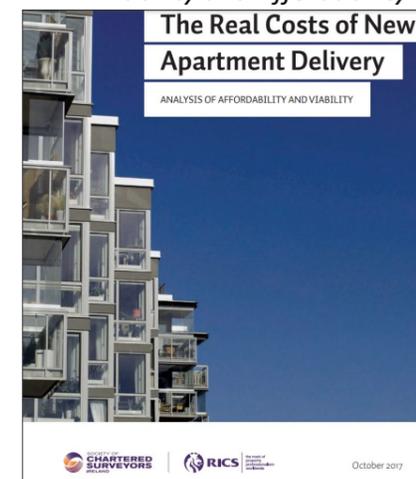
Some time ago, the Royal Institute of the Architects of Ireland (RIAI) undertook several studies on density - including *The New Housing* (2002) and *The New Housing 2. Building Better Communities* (2009).

Other earlier studies include the seminal Essex County Council *A Design Guide for Residential Areas* (December 1973) and the *Urban Task Force: Towards an Urban Renaissance* (1999).

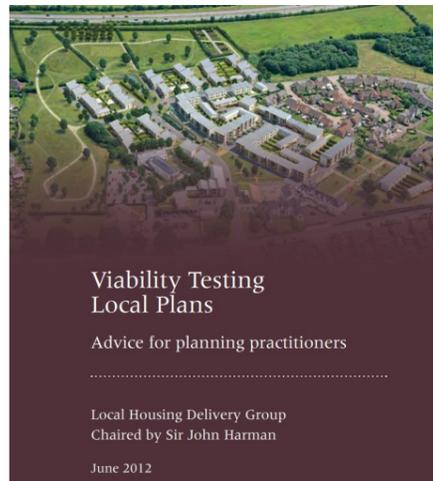


The current Ministerial Guidelines are too restrictive on this important issue, exacerbated by the lack of Irish policy on the issue of viability to complement the work undertaken by the Society of Chartered Surveyors Ireland on the costs of houses and apartment, respectively:

1. *The Real Costs of New Apartment Delivery. Analysis of Affordability and Viability* (October 2017).
2. *The Real Cost of New Housing Delivery. Analysis of Real Market Data to Evaluate Viability and Affordability of New Housing Development* (July 2020).



For example in England, the Harman Report of June 2012 (*Visibility Testing Local Plans Advice for Planning Practitioners*) was the principal output of the Local Housing Delivery Group (chaired by Sir John Harman) designed as a cross-industry group involving a broad group of public and private sector stakeholders with an interest in home building.



It had two working groups - one to develop advice on the best way to test the viability of local plans; the other to recommend ways to simplify the locally applied standards regime.

Such a template might prove beneficial as a basis for a similar initiative in an Irish context. Such a body could be charged *inter alia* with devising a more equitable vacant site levy scheme stemming from a greater appreciation of project viability.

5.0 TIMELINE TAKEN TO GO THROUGH THE PLANNING SYSTEM AND THE IMPACT THIS IS HAVING ON DELIVERABILITY AND VIABILITY

5.1 Vacant Site Levies – a stick rather than a carrot approach to the delivery of housing

The Planning System is more aligned to the factors of the environment and society than the market.

One of the principal mechanisms to tackle perceived land-hoarding was the Vacant Site Levy (VSL).

The Vacant Site Levy was introduced in October 2018 under the *Urban Regeneration and Housing Act 2015*. It was originally mooted by the then-Lord Mayor of Dublin Oisín Quinn in 2013.

Vacant Site Levies are imposed unevenly throughout Ireland. Whilst many local authorities maintain a Register, others do not.

Most telling is that originally, the Lord Mayor's initiative excluded public bodies and was intended to apply only to private developers.

However, when introduced, the legislation under the 2015 Act extended to public as well as private bodies, given that most vacant lands nationally are in public ownership.

In December 2019, the then-Minister for Housing, Planning and Local Government identified some 340 No. individual sites on local registers, with 80 No. on the Register on 1 January 2018 and therefore liable to the 3% annual levy, rising to 7% from 2019 onwards.

The VSL is inherently unduly punitive to those genuinely seeking to develop lands with some sites placed on the Register shortly after agents and developers approach planning authorities in pre-application discussions, or are delayed due to a lack of services or infrastructure, which are the responsibility of the State/LA.

As reported in January 2020, of the €882,495 levied in fines, Dublin City Council levied €640,950, of which €463,500 – or 72% - was paid to itself, as the Council was the largest owner of vacant sites!

Conversely, levies paid by the other 28% are at cost to the owner, the Council's cost being an internal accountancy exercise.

The word "viability" is not included in the *Planning and Development Acts 2000-2020*.

Levies increase the costs of building, with the cost ultimately transferred to and borne by the purchasers of new homes.

5.2 Zero Tolerance for the Invalidation of planning applications

One of the principal issues of planning delay is that of the invalidation by planning authorities of planning applications.

Recent analysis demonstrates that of the 364,362 No. applications of all development types (incl. residential) made in the 11-year period from 2009 to 2019, some 55,098 No. (or 15.13%) were invalidated by the local authority.

Invalidation is not because of the subjective or objective assessment of the merits or otherwise of a development proposal. Rather it is concerned with administrative matters - information on drawings and the numbers of copies of documents provided, etc.

Whilst all applications are assessed under the relevant articles of the *Planning and Development Regulations 2001-2020*, there is a divergence in interpretation planning authority-by-planning authority.

There is zero need for invalidation, and it can readily be changed through the introduction of a simple, equitable over-the-counter system.

A sliding scale of validation fee could be introduced depending on the complexity of the proposal that would result in timely validation. That would help to fund the service, whilst ensuring the timelier validation of planning applications.

5.3 Factors contributing to delay

There is a level of misunderstanding as to the factors that lead to delay in the delivery of housing.

Despite being included in the 2018 *Planning Act*, the Commencement Order for section 23(4) (which itself amends section 34 of the *Planning and Development Act 2000*) has not yet been signed. That piece of legislation designed to compel Planning Authorities to reply to pre-commencement conditions that the Authority itself (or An Bord Pleanála on appeal has imposed on a development consent) in a timely fashion.

Failure to commence that legislation continues to lead to legal uncertainty in determining compliance with the terms of a Permission and delays unnecessarily closure on the transaction of residential sales.

It also delays the commencement of development.

5.3.1 Understanding the stages of the planning process

The determination of planning applications is defined as part of a “development management” process. The process can be broken down into several stages:

1. Pre-planning (including Feasibility) – several months or years.
2. Week 0: Lodgement (including Validation).
3. Week 5: (end) Assessment by the Planning Authority including review of third-party submissions lodged within the initial five weeks.
4. Week 8 (end): Planning Authority Decision

In 2019, of the 29,117 No. applications lodged (across all “use classes” from residential to industrial), some 18,215 No. (or 62.6%) were determined within eight weeks.

Accordingly, 37.4% received *Requests for Further Information* (RFI). Preparation of the replies to those can take up to six months.

If the decision is made within eight weeks (or longer following an RFI), there was a 5.6% chance of appeal to An Bord Pleanála in 2019 (7% in 2018).

5. If appealed to An Bord Pleanála in 2019, some 24% of planning authority decisions were confirmed, 50% varied, and 26% reversed.
6. The determination time for non SHD appeals was an average of 18.4 weeks in 2019 (with a 13 week average (excluding pre-apps) for SHD).
7. Following decision, all permissions have conditions, many of which require further compliance submission. Such submissions can take several weeks or months to prepare, with development delayed in the interim.

8. Judicial Review proceedings can be instigated within eight weeks of the Council’s or Board’s (as appropriate) decision. Many are successful, albeit on limited technical grounds, leading to extensive delay and extreme difficulty in funding.

These factors are central to counteract the use-it-or-lose-it-scenario mooted in the September 2019 SHD Review, as compounded in the Opening Statement by the Department of Housing, Local Government and Heritage’s Planning Policy and Legislation Principal (Terry Sheridan) to the Joint Oireachtas Committee on Housing, Local Government and Heritage (Strategic Housing Developments) on 10th November 2020.

The Principal stated that *“notwithstanding the extensive effort and resources invested by the State in the establishment and operation of the SHD arrangements, one of the concerns of the Department prior to the undertaking of the external review was the level of activation of SHD permissions which have been granted”*.

Importance of empirical evidence – start with “why”??

The Principal cautioned that *“notwithstanding the commitment in the current Programme for Government not to extend the SHD arrangements beyond end 2021, the Department is presently engaged in the drafting of the necessary legislation to bring forward the implementation of this “use-it-or-lose-it” recommendation which it is intended will be applied more generally on housing developments going forward.”*

However, no empirical evidence was presented to the Oireachtas to explain why delay might occur – apart from Statement that *“the primary purpose of the SHD Arrangements was to expedite the delivery of additional housing supply, rather than to serve to enhance site value.”*

For the lose-it restriction, the Principal suggested an 18-month period in the absence of any interpretation or understanding of the pressures on a developer or housebuilder who is actively dealing with extensive compliance material (i.e. seeking pre-commencement written agreement responses from the relevant planning authority), together with the complex due diligence requirements of financial instalments particularly in relation to large complex (SHD) schemes and the propensity for them to be challenged at Judicial Review.

It is a fact that in certain cases undue delay is caused to a developer or housebuilder by a public or State body – outside the homebuilder’s control – which ultimately delays or restricts commencement.

6.0 IS THE PLANNING SYSTEM FIT FOR PURPOSE?

6.1 On-line Planning Services are long overdue

Action Item 3.9 of the Governments’ *Rebuilding Ireland* (2016) initiative states the following (Table 6.1.) regarding the introduction of a proper e-planning system.

Action No.	Description of action	Objective	Timeline	Owner
3.9	We will support the development of on-line planning services for the local authority sector and An Bord Pleanála.	To give legislative underpinning as part of the Planning and Development (Amendment) Bill 2016 and to actively support the roll-out of e-planning in the local authority sector and An Bord Pleanála.	Q4 2016 – enact Planning and Development Amdt Bill 2016. Q4 2017 – accelerated roll-out of e-planning across local government sector and ABP.	DHPCLG LAs, ABP

Figure: 6.1 Action Item 3.9 of the Governments’ Rebuilding Ireland (2016) Initiative. (Source: Rebuilding Ireland (2016), pg. 100.)

The online system should have been rolled out across Ireland’s 31 No. Planning Authorities and An Bord Pleanála by Q4 2017, but has not.

The Department of Housing, Local Government and Heritage’s current proposal, i.e. in Q4 2020 – is trialing a system in Tipperary County Council that if successful, will be rolled out in Ireland over an 18-month period.

At best, that would have a functioning electronic planning system in Ireland by Q1 2022 – some seven years after the *Rebuilding Ireland* programme, and 12 years since the DEHLG promised its delivery.

Against the backdrop of electronic submissions elsewhere, the existing *Planning and Development Regulations 2001-2020* allow a certain extent of electronic planning – but the Minister, as advised by senior planning officials, has not put procedures in place.

In England, in contrast, applicants are encouraged to apply electronically as a default position.

However, in Ireland – even at the height of the Covid pandemic - for developments located in the Cherrywood Strategic Development Zone (SDZ), the DLRC Planners insist on the submission of 23 No. physical copies of all documents.

For drawings over A3 size, this renders significant difficulties for most Applicants.

6.2 E-planning as part of a root-and-branch review

The Government undertook in *Rebuilding Ireland* to undertake a “root-and-branch” review of the Irish planning system. (Action Item 3.10.)

Whilst some improvements have been made, such as the introduction of the Strategic Housing Development (SHD) initiative, it falls short of the “root-and-branch” review to have been complete by the DHPCLG by Q1 2017 “to ensure a more effective, responsive and accessible planning system.”

In 2008, The Department of the Environment, Heritage and Local Government’s *Resourcing the Planning System - Consultation Paper* stated that:

“e-planning can provide planning authorities with the potential to deliver further service improvements through streamlining the number of manual transactions and process timeframes associated with the development management process.” (Page 20.)

The Report projected that the Planning Regulations “would be amended in 2008 to remove any regulatory barriers to e-planning.”

Some twelve years later, during the COVID-19 shutdown, the absence of a fully functioning electronic planning system continues to hamper the delivery of housing.

7.0 CONCLUSION AND RECOMMENDATIONS

7.1 Short-and Medium-Term Initiatives

In summary, we recommend that the following initiatives be undertaken to expedite the provision of housing:

Planning Review

1. Commit to a thorough root-and-branch review of the Irish planning system within a 100-day period.

Reason: the *Programme for Government* commits to several initiatives (e.g. introduction of the *Climate Action Bill*) within first 100 days, and the root-and-branch review of planning – promised by Q1 2017 - is significantly overdue.

2. Expedite delivery of the long-awaited electronic planning system.

Reason: this will serve to streamline and speed up the planning process. It will also facilitate greater participation in the process.

Planning Legislation

3. Examine the potential for the greater use of Outline Planning Permissions to facilitate definition of strategic design and planning issues at the outset rather than at the end of an expensive and elongated period that adds to the costs of purchasing houses.

4. Extend legislation facilitating Strategic Housing Development (SHDs) beyond December 2021 and increase the quantum of complementary commercial development allowable to a figure of some 50% of the SHD gross residential area.

Reason: to provide for more holistic schemes, and to provide (market certainty) particularly considering the projected end date of the *Rebuilding Ireland Action Plan* in December 2021. There must be a seamless, rather than 11th hour, transition.

5. Implement without further delay Section 23 (4) of the *Planning and Development (Amendment) Act 2018* (which amends section 34 of the Principal Act) compelling local authorities to agree with developers points of detail in respect of planning conditions within eight weeks.

Reason: this will reduce planning delay.

6. As committed to in the *Programme for Government*, complete and enact primary legislation to establish the Land Development Agency, empowering it to facilitate the provision of housing on under-utilised residentially developable State-owned lands.

Reason: this will serve to open pockets of under-utilised lands for the provision of housing.

7. Resist the reintroduction of a Windfall Gains Tax or similar punitive measure.

Reason: when previously introduced, it stopped development with no revenue accruing.

8. Review eligibility for Judicial Reviews and complete the review process commenced in 2018.

Reason: the propensity for Judicial Review is delaying the delivery of Strategic Housing Development in particular.

9. Abandon the mooted introduction of a “use-it-or-lose-it” time restriction to planning permissions.

Reason: such restrictions cannot be introduced when the State in its many forms is a major contributor to delay, compounded by the facilitatory nature of legislation in relation to Judicial Reviews.

10. Review the *Planning and Development Regulations 2001-2020* to identify what forms of development might be added to the “exempted development” categories (i.e. what development might be permitted without the need of secure a (new) permission for development?

Reason: to streamline the process and to remove unnecessary delays.

11. Amend legislation to require planning authorities to pay a fine of 50% to Applicants for incorrectly imposed financial contributions.

Reason: to ensure decisions are equitable and fully considered prior to their inclusion in *Notification of Decisions to Grant Permission*.

Planning Processes & Standards

12. Expedite delivery of the long-awaited electronic planning system at both local authority and An Bord Pleanála level.

Reason: this will serve to streamline and speed up the planning process and provide for greater accessibility.

13. Prepare a review of all Ministerial Guidelines. For example, streamline design standards nationally in terms of definition of 'dual aspect', garden sizes, garden walls, bin stores, bike stores etc. all adding unnecessary costs and affecting the amount of space available for development.

Reason: many Guidelines are outdated, not illustrated with examples, and / or still in draft. Their completion will ensure that they are fit-for-purpose.

14. Review house design standards in terms of the provision of public and private open space, and separation distances.

Reason: to facilitate an open debate on best practice having regard to international Practice

15. Introduce the concept of the "viability testing" of plans at all levels from Local Area Plans to County/City Development Plans and Strategic Development Zones, to ensure an equitable weighting to market requirements.

Reason: this will introduce the fundamental concept of viability and ensure that plans are not prepared in the absence of a balanced market understanding.

16. Review the role of Irish Water in terms of delays in the delivery of housing both at the Pre-Application and post-Decision stages when planning is in place to go on site.

Reason: to remove the provision of Irish Water paperwork as an impediment to commencing development on site.

17. Implementation of a "lessons-learned" approach to Strategic Housing Development (SHD) tripartite consultations between multi-disciplinary local authority teams, the prospective Applicant and design team, and initial An Bord Pleanála inspectors.

Reason: Understanding and learning from best practice to be used in the replacement for the SHD process post-December 2021.

Data Collection and Research

18. Undertake a review of the statistics underlying the invalidation of planning applications by planning authorities including consideration of the introduction of a paid over-the-counter validation service.

Reason: this will streamline the service and provide revenue, while reducing risk.

19. Provide the resources and mechanism for the central data collection and research capacity.

Reason: this will facilitate the work of the LDA, and help to clarify disparate data collections sets. It will also quantify the quantity of the State-owned and State-controlled lands, and quantify the exact amount of new residential delivered.

In addition, the real extent of serviced zoned lands must be quantified.

20. Commission a dedicated Ministerial lead to provide a policy arena on property issues and establish an interdepartmental group of officials to oversee the co-ordination of the implementation of that policy.

Reason: *Rebuilding Ireland* (2016) needs review, and the current Department of Housing, Local Government and Heritage is under-resourced.



21. Establish a clearing house model for engagement with the property industry.

Reason: this will create a focused, informed, and collaborative public:private sector group. This would include a country-by-country review of the database for all zoned lands within each LA, identifying the impediments and noting progress.

22. Publish an *Annual Property Statement* measured against an agreed vision and goals to assess the progress of the initiatives.

Reason: this will provide certain statistics such as housing completion, and provide a mechanism to assess the performance of local authorities against a range of performance criteria.

23. Instruct local authorities to provide a schedule of all zoned lands in their administrative areas, identifying any impediments to the delivery of housing lands in terms of services, roads, accessibility etc.

Reason: This may inform and complement the work of the LDA.

Taxation

24. Examine the issue of revised planning fees commensurate with a new customer-focused, fully-resourced, planning system.

Such a revised funding mechanism would also need to be tied to a nationally-based equitable review of Section 48 and Section 49 financial contributions.

Reason: this will ensure equitable costs and benefits.

25. Review the Vacant Site Levy nationally.

Reason: so that they are equitable and are reflective of the reasons why there might be delay in progressing with the development of sites - from planning delay (including awaiting response on compliance) to viability to land assembly.

Planning Resources

26. Resources: undertake a review of resourcing (including staffing levels) at local authority and An Bord Pleanála level.

Reason: To ensure that resources are deployed appropriately.

27. Introduce fines for planning authorities for planning applications invalidated in error. Such an initiative could be complemented by a paid over-the-counter validation service.

Reason: to ensure that Applicants are equitably compensated for unnecessary delays.

I trust that this is of interest and I am happy to clarify any issues arising.

Yours sincerely

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