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Strategic Housing Review  
Planning Policy Section  
Department of Housing, Planning and Local Government  
Customs House  
Dublin 1

16 July 2019

A Chára,

The Irish Planning Institute (IPI) has undertaken a review of the Strategy Housing Development legislation as enacted in the Planning and Development (Housing) and Residential Tenancies Act 2016 and Planning and Development (Strategic Housing Development) Regulations 2017. The IPI has undertaken this review of its own SHD policy as stated in IPI submissions in relation to the Planning and Development (Housing) and Residential Tenancy Bill 2016 and the Review of Rebuilding Ireland: Action Plan for Housing and Homelessness 2017. The IPI has undertaken consultation with its members across the Planning System on this subject as well as the IPI Policy and Research Committee and Council.

## Key Issues covered in IPI Review of Strategic Housing

### **Broad Principles**

- Methodology of Ministerial Review on Strategic Housing Development
- Implications under Aarhus Convention
- Principle of Subsidiarity
- Stated purpose of Strategic Housing Development
- Plan Led Development
- Mono Use Development

### **Technical Matters**

- FI Request
- Website
- Level of Detail Required
- Pre-Application Consultations
- Amendment SHD Applications
- Decision Making
- Judicial Reviews
- Statements of Consistency
- EIA Requirements
- Application of Best Practice
- Housing Models

Founded in 1975, the Irish Planning Institute (IPI) is the all-island professional body representing professional planners engaged in physical and environmental planning in Ireland. The Institute's mission is to advance planning by serving, improving and promoting the planning profession for the benefit of the community and the common good. The IPI represents c.700 planners from across the public, private, semi-state and academic sectors. Our members work in central government, private practice, agencies, third level institutes, planning authorities in the Republic of Ireland and Northern Ireland, An Bord Pleanála and elsewhere. It is also affiliated to the umbrella body the European Council of Spatial Planners (ECTP-CEU) and has international links with the Planning Institute of Australia (PIA) and the New Zealand Planning Institute (NZPI) and is a member of the Global Planners Network (GPN).

This submission will present the comments of the Institute in two sections:

Part 1 Concerns regarding removal of planning function from Local Authorities and the wider implications of Strategic Housing Development process for core strategies and statutory spatial planning policy

Part 2 Technical matters arising under the existing Strategic Housing Development application process

As a major stakeholder in the planning system, the Irish Planning Institute anticipates a formal review of the current SHD Progress before the end of 2019 and looks forward to learning more from the Department of Housing, Planning and Local Government about the methodology of this review. The Institute will welcome greater clarity about the methodology for any review on Strategic Housing and encourages a holistic approach be taken that evaluates both quantitative and qualitative information.

## Part 1

### **Concerns regarding removal of planning function from Local Authorities and the wider implications of Strategic Housing Development process for core strategies and statutory spatial planning policy**

The Institute retains its previously articulated concerns about the removal of planning functions from Local Authorities to allow applications for developments of 100+ housing units to be made directly to An Bord Pleanála. The IPI has previously raised concerns about the combination of the role of the Board as a consenting and appeals body under the *Planning and Development (Strategic Infrastructure) Act 2006* and, indeed, similar proposals set out under the *Maritime Area and Foreshore (Amendment) Bill 2013*. Aside from concerns about efficiency (discussed in more detail in the section below), the concerns of the Institute in this regard are twofold:

- The removal of the right of third party appeal for an increasing set of development types must have implications for Ireland's ability to properly implement the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention), particularly in relation to the third pillar: access to justice in environmental matters. The Institute considers it vital that we encourage, rather than reduce, public engagement and community involvement at all stages of the planning process. This can be achieved through public education on the development plan process and on the planning system so that the public can make a real contribution to the development of sustainable communities.
- The centralisation of planning function is fundamentally at odds with the principle of subsidiarity (i.e. that decisions should be made by a competent authority at the most immediate or local level) – this principle is at the core of and underpins the structure of the modern, democratic Irish planning system. The Department of Housing, Planning and Local Government have not published any evidence or rationale indicating the basis upon which the consent powers of Local Authorities for large housing applications have been temporarily removed. Local Authorities are best placed to act as planning authorities for all development in the context of the well-established structures and consenting mechanisms provided by the planning process. The role of the Local Authority in the creation of statutory planning policy for the local area and the role of the Local Authorities within communities should be protected, regardless of the size or potential environmental impact of the development.

The removal of certain powers from local government under the *Planning and Development (Amendment) Act 2015*, in relation to the determination of planning policy and the adoption of the Strategic Housing Development process are part of a worrying trend for the piecemeal centralisation of the planning system. The centralisation of the planning system is not set out in any government planning policy and a disjointed approach to the removal of planning function from Local Authorities has the potential to undermine certainty, efficiency and the efficacy of the planning system in Ireland. Moreover, the gradual erosion of planning powers at local authority level is having a negative effect in terms of staff morale with associated problems of demotivation being reported at local authority level. The Institute are of the opinion that restoring planning powers for large scale housing developments to Local Authorities will help redress this issue and will help promote and strengthen the planning profession, particularly at local level.

#### **Purpose of Strategic Housing Development**

The purpose of Strategic Housing Development function is to accelerate the delivery of much needed housing in accordance with the principles and objectives contained in the 'Rebuilding Ireland: Action Plan for Housing and Homelessness' as an emergency measure justified by the evidence-based housing crisis. In 2018, 39 developments were lodged with An Bord Pleanála, 10 of those in November and December. An Bord Pleanála decided 30 applications in 2018 and permission was granted in 27 cases, for a total of 7,102 housing units (3,284 houses and 3,818 apartments) and 4,479 student bed spaces. Between January and March 2019, 24 applications were received by the Board. A total of 9 applications were decided in the first quarter of 2019 (6 granted and 3 refused). In aggregate,

permission was granted for 1,685 housing units (707 houses and 978 apartments) and 289 student bed-spaces.<sup>1</sup> To date, in excess of 9,000 housing units have been permitted. However, these numbers have not yet translated in terms of the number of housing units delivered on the ground. This demonstrates the need to look beyond addressing the perceived inefficiencies in the planning system as a key factor in addressing the shortfall of housing delivery in Ireland. The Irish Planning Institute has long favoured the introduction of a site or land value tax, collected centrally but with all of the revenue collected going to the county to which the tax was ascribed. This tax would encourage the more sustainable use of land by encouraging the development of under-utilised, serviced zoned and accessible lands in urban areas supporting national policy around compact development. Experience from other jurisdictions such as Denmark and parts of the US indicates that the penalty of higher taxes on zoned and serviced sites, together with a strong planning system can promote appropriate infill development. This tax will act as a penalty to landowners, encouraging them to use lands to their full potential. This site value tax should only be implemented once the land has received planning permission.

Moreover, given the lack of a clear evidence base for SHD at present, the review might also investigate a broad range of alternatives. For instance, an examination of the potential role of the regional structure to formulate teams that deal with specific types of applications and which draw on expertise regionally allowing for economies of scale with regard to resources.

The perceived statistical success of the SHD process is publicly benchmarked to ABP's capacity to meet their deadlines. Nonetheless this perceived success hides all the pressures and time /resource dedication at local level carried out in advance of validation. While An Bord Pleanála has met the 16 week mandatory time period in all of the cases (An Bord Pleanála, 2018), the Ministerial review of SHD needs to take into account the real time frame involved in the SHD process from the very beginning of the process with local authority s. 247 consultations until a decision is ultimately reached. A cursory analysis of the statutory timeframes relating to SHD applications in comparison to standard planning applications suggests that the former can be determined within 39 weeks (although longer depending on level of consultations etc.). This compares with a statutory timeframe of 30 weeks on a standard application (although admittedly longer if FI is requested). All proposals required/are requiring a number of pre planning meetings which span over a number of months which when calculated into the process doesn't really make a huge impact on time expedience.

The SHD mechanism makes no contribution to alleviating the workload of local planning authorities (or applicants) given the level of inputs required. Rather, it seems that there is a duplication of efforts between An Bord Pleanála and local planning authorities by virtue of the numerous requirements placed on LAs (e.g. to engage in s. 247 consultations, attend the s. 5 SHD consultations, submission of Chief Executive's report etc.). There is a significant administration requirement to organise all sections to be present at SHD meetings and also a demand on meeting space large enough to accommodate the average number of persons attending (12-15). Timelines which refer to An Bord Pleanála have little cognisance of ongoing pressures at Local Authority level, noting this has implications for more than the planning section. However, Planning Authorities at application stage, once they submit the Chief Executive's report on time, will recoup some of the fee which in most cases will exceed the fee at local authority level.

The Irish Planning Institute believe that the time-savings argument alone is not compelling enough to justify the continuation of the SHD mechanism, particularly when weighed up against the enormous costs borne by the planning system as a whole in terms of promoting democratic localised decision-making. Furthermore, the granting of permissions for housing does not in itself guarantee that these sites will actually be developed.

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<sup>1</sup> Strategic Housing Development (SHD) Update, Quarter 1 2019, An Bord Pleanála website

## **Plan-led Development – National Versus Local Planning Policies**

The making of development plans and local area plans is a reserved function. Planning Authorities are required by Circular FPS04/2018 to review development plans and local area plans within six months once the Regional Spatial and Economic Strategies have been adopted. In the interim, it is noted that An Bord Pleanála are applying national planning policies as contained in the National Planning Framework Plan and recent section 28 guidance such as inter alia the Urban Development and Building Height Guidelines. The introduction of the latter guidelines necessitates a review of all County Development Plan and Local Area Plans to ensure consistency with same. There is an opportunity to align the county/local statutory plans with national and local policy. However, if alignment is to be achieved in an effective and timely manner local authorities will need to be resourced to discharge their plan making function. In the interim, there is a possibility that the densities and heights permitted by the Board may in instances be inconsistent with the objectives of the county and statutory plans. The commencement of plan making by planning authorities will facilitate public participation in the planning process and will ultimately feed into the local policy context that will determine future planning applications for housing and other proposals.

Under s.9(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (2016 Act), the Board must only “have regard to” the provisions of the development plan in determining applications for SHD. This weakens the role of the development plan in the development management process and may undermine the integrity and efficacy of the plan led system in which the public has invested its faith. The role of the Regulator is critical now more than ever as the review process gets under way for County Development Plans and Local Area Plans ensuring that there is greater alignment between national and local policies.

The Institute strongly advocates for additional resources for planning authorities as a matter of urgency. In 2018, the Institute carried out a survey of planning resources within Local Authority Planning Departments. 27 Local Authorities responded to this survey with 25 citing a need for extra qualified resources within their planning authorities. The resource constraints in plan making have become acute in certain local authorities as the timeframe dictated by the circular of July 2018 takes effect remembering that neighbouring local authorities within the same region will be competing for identical plan making resources such as environmental assessment at the same time.

In recent years the default response to tackling perceived inefficiencies in the planning system has been to transfer responsibility away from Planning Authorities to the Board without adequate evidence underpinning such decisions. Every effort should be made to channel resources and innovative responses at the local level in the first instance to curb the ongoing transformation of Ireland’s planning system into a two-tier system and any further erosion of 3<sup>rd</sup> party rights of appeal. Better resourcing of Planning Authorities and An Bord Pleanála could allow for a reduction in the mandatory time periods associated with standard applications and appeals without jeopardising the principle that key decisions about the future development of an area are best determined locally.

For the reasons set out above in Part 1 of this submission, the Irish Planning Institute calls on the Government to restore planning powers to local planning authorities for large-scale housing development on or before the end of the statutory SHD timeframe set out in the 2016 Act. It is on this basis that we provide more detailed technical comments with regards the operation of SHD in practice in Part B of this submission which the Department of Housing, Planning and Local Government may wish to consider in terms of improving arrangements should the decision be taken to extend the SHD process for a further 2-year period up to Dec 2021. Moreover, the IPI feel that some of the technical comments provided in Part B of this submission may also be useful in terms of improving efficiencies once powers are restored to local planning authorities at the end of the statutory SHD timeframe.

## **Mono Use Development**

A significant deficiency in the SHD process is the mono-use nature of the development proposal. Mixed use development underpins sustainable communities and good planning. The NPF has at its core, the spatial co-location of working and living. The introduction of SHD has mitigated against an early focus on this form of development. The promotion of mixed use development is considered to be best achieved by reverting to Planning Authorities for the consideration of housing applications where a more holistic approach can be taken to the development of towns/cities as a whole. For instance, an examination of the potential role of the regional structure to formulate teams that can offer expertise regionally allowing for economies of scale with regard to resources could be explored to assist in this regard.

## **Part 2**

### **Technical matters arising under the existing Strategic Housing Development application process**

#### **FI Request**

The IPI are aware that there have been calls for the introduction of a Further Information Request mechanism once a SHD planning application has been submitted to the Board for determination. Any suggestion in this regard will undermine the efficiencies that SHD seeks to make. By allowing FI, the process which is supposed to be a fast-track system would be slowed down significantly and may also result in the making of less than adequate applications on the assumption that further information would be sought. Prospective applicants are aware of the need to engage with Planning Authorities and internal departments to avoid any new issues being raised. FI would also require third parties to be allowed to comment where there are material changes. The Chief Executive would also be required to give a response to these submissions before an Inspector can continue with the assessment. This process may add a further 12 weeks to the process from the time the FI is submitted (not allowing for the time it takes the applicant to submit the FI).

#### **Website**

ABP's website, in relation to active SHD planning applications, provides very limited information on each of the applications – i.e. no new information (i.e. Observations / CEs Report) is made available between lodgement & decision <http://www.pleanala.ie/shd/applications/CurrentApplications/CurrentApplication30Jan.pdf>. Moreover, the fact that the webpages for individual SHD applications are controlled and managed by the applicant themselves is problematic as these sites tend to be taken down as soon as a decision is reached thus reducing the ability of third parties to examine decided cases.

A possible solution for ABP could be to put in place a dedicated section on their website with full information on current SHD cases being determined i.e. to include the following in PDF Format.

- standard case details i.e. ref. no., applicants, DOD, lodge date, determination date etc.
- full & downloadable details of all documentation submitted as part of SHD planning application
- full & downloadable copies of the Observations & Submissions from Prescribed Bodies
- downloadable copy of the Chief Executives Report from the Planning Authority

There is also no substantial information available on ABPs website in relation to decided SHD applications. As with ongoing applications, it is suggested that ABP put in place a dedicated section on their website with full information on decided SHD applications i.e. to include the following in PDF Format:

- standard case details i.e. ref. no., applicants, DOD, lodge date, decision date etc.

- full & downloadable details of all documentation submitted as part of SHD planning application
- full & downloadable copies of the Observations & Submissions from Prescribed Bodies
- downloadable copy of the Chief Executives Report from the Planning Authority
- downloadable copy of Inspectors Report, Bord Order & Bord Direction

### **Level of Detail Required**

It has been suggested that there is a clear need for a formal SHD query process. The issue is that applicants must lodge a detailed Pre-Application Consultation (PAC) request to the Board and go through the entirety of the 9-week SHD statutory consultation process before getting clarity on technical or administrative queries (or even before getting confirmation that their proposal qualifies for SHD). The introduction of a formal SHD query process (essentially a sense-check screening stage) which can be used by applicants and agents to submit technical / administrative queries to the Board before going to time/ resource/ monetary expense of lodging a full PAC request to the Board could be very helpful where technical or site-specific administrative queries arise.

Notwithstanding the provisions of the Regulations, there is uncertainty as to what is expected of prospective applicants in terms of the scope and nature of the documentation for pre-application consultation requests i.e. should a 'draft planning application' including all draft detailed technical reports/ drawings be submitted or is a higher-level package of outline technical reports/ drawings sufficient? It may be useful for ABP to provide feedback directly in the context of this review as to the nature and extent of documentation required for PAC stage so as to minimise the duplication of documents and reduce wastage.

### **Pre-Application Consultation (Tri-partite) meetings**

The Institute supports the facilitation of tripartite meetings between the local authority planners and technical staff, the prospective applicant's design team and the Board's SHD team. These meetings have been reported by some members to be "efficient and effective". Feedback from applicants has been that they view the process from a risk assessment of likelihood of what will satisfy ABP rather than taking in all contextual points and CDP policy and best design and sustainable quality.

Following notification to the Planning Authority that a Pre-Application Consultation request has been accepted, the time period for the PA to generate reports is considered too short having regard to the available resources and the need to seek and co-ordinate responses from internal departments in particular water services and roads department where responses can play a vital role in informing issues that need to be addressed. The legislation states that response should be "within two weeks" – although IPI member experience on the recent requests has been less than 7 working days.

The current legislation allows for a second consultation meeting with ABP prior to lodgement. However, there is currently a lack of clarity on how and when this meeting can be requested. Consideration could be given to amending the regulations to provide greater clarity on this matter and should specify when and in what particular instances such a meeting would be facilitated having regard to the principles of natural justice.

### **Amendment SHD Applications**

ABP are directing amendment applications down the route of Section 146 (b) of the Planning and Development Act 2000 – 2018 which relates to Strategic Infrastructure Developments (SID). The SID process comes with a €30,000 fee. The legal basis for this approach is unclear and it has led to confusion. There is a need for clarity on the procedure for amendment applications including the content of these applications, the fees payable and the timeframe for their consideration.

The legislation should be amended to establish a system for amendment applications and should include an appropriate fee relative to the scale of changes proposed, consistent with existing planning fees, and a statutory timeline for determination. Clarification should be provided on whether Local

Authorities can deal with minor amendment planning applications for SHD schemes. Given that compliance issues are dealt with by Planning Authorities, it is considered that they are best placed to deal with amendment applications. This would be faster and simpler than using the SID process via ABP.

### **Decisions and Compliance Matters**

Conditions attached to any grant of permission by the Board for an SHD need to be very clear in relation to the action required by the applicant or else confusion arises for applicants / agents. For example; where a further application is required to change house types, replace houses with creche etc.; it should be very clear to whom this application is to be submitted – the planning authority or the Board.

Further consideration needs to be given to how applications which have been refused are handled. Under the current legislation where an application is refused the applicant is required to start the whole process over. There may be merit in allowing applications to be re-submitted without engaging in the full suite of pre-application consultation with the local authority and ABP. For example, is there merit in introducing a system whereby applicants can lodge a new SHD application, using the same opinion in respect of the original PAC along with revised plans and particulars addressing the reasons for refusal. This provision would save time and resources where the Planning Authority has already provided reports and ABP has already issued an Opinion and a subsequent Opinion may provide very little additional information so as to inform the applicant what further amendments are required.

The SHD Act included provision for a statutory timeline to agree compliance on all planning permissions (Section 23). To date this has not been enacted in full. Developers are left with a choice to either experience significant delays in commencing until compliance is agreed, or submitting their compliance and commencing without agreement which carries significant risk for all parties involved. The enactment of this legislation is critical, along with ensuring sufficient resources are in place to address the matter. We would support the local authorities in their need for additional resources to deal with compliance.

### **Judicial Reviews**

The Institute is mindful that the introduction of Strategic Housing Development has the potential to lead to an increase of Judicial Reviews. This is directly related to the diminution of third-party rights in the SHD process which is likely to result in Judicial Review being used as a de facto third party right of appeal. This is problematic in terms of negating any time saving benefits that the SHD process may generate, but also in terms of third-party rights more generally as Judicial Review is prohibitively expensive for most. The Institute has always held the position that Judicial Reviews in relation to planning matters should be addressed by a Planning and Environmental Court to help redress the delays and level of expense incurred. This measure is yet another example of how efficiencies can be generated in the planning system without the need for eroding planning powers at the local level through SHD and other centralised planning mechanism.

### **Other General Observations**

- Statements of consistency: The Planning and Development (Strategic Housing Development) Regulations 2017 require that a request to enter into consultation with An Bord Pleanála in relation to a Strategic Housing Development be accompanied by a statement to the effect that, in the prospective applicant's opinion, the proposed strategic housing development is consistent with relevant guidelines issued under section 28 of the Planning and Development Act 2000. In some cases, it is not really possible to be consistent or inconsistent with section 28 guidelines and this creates difficulties responding to this requirement. For example, while the Architectural Heritage Protection Guidelines for Planning Authorities sets out advice in relation to the conservation and management of historic buildings, it does not offer a set of universal rules that could be applied to the development of a historic building, but instead states that "The blanket application of standard solutions to historic buildings is not appropriate". Given this, it is unclear how a statement of consistency for a development which includes a development of a historic building or buildings (e.g. protected structure(s)) would address the issue of consistency with the Architectural Heritage Protection Guidelines. Further clarity as to how this requirement should be interpreted would be beneficial.



- EIA Regulations There is a disconnect between the new EIAR legislation which requires screening of all applications for EIAR and requires planning authorities to request an EIAR where they are unable to - screen out. In SHD applications due to the absence of further information or clarification mechanism ABP are required to refuse or invalidate a sub-threshold developments if an EIAR is identified as required. It is suggested a mechanism to allow ABP to clarify or request additional information of a non-material nature should be included to address technical or environmental issues and bring it in line with the EU EIAR directive.
- Application of best practice - The introduction of “Statements of Consistency” and “Design Statements” has greatly assisted in the presentation of focused documents that readily identify how proposals are considered to be consistent with national and local policies. The introduction of such documents in all planning applications would be of benefit ensuring that a clear rationale for the proposal is provided having regard to provisions of national guidance e.g. 12 criteria set out in the Design Manual. The generic use of statements should be avoided, they need to be site specific to be of any use.
- Housing Models – There has been a marked increase in the number of different housing models/tenure type submitted such as Build to Rent and Shared Accommodation which are relatively new in an Irish context. The greater provision of housing types and choice for citizens is to be welcomed. However, there needs to be clear guidance at national level regarding standards to be applied to such housing formats. Currently, only one format is referred to in the Apartment Guidelines 2018 in respect of shared accommodation, yet the guidelines imply there are other formats. There should be greater clarity regarding other appropriate formats, appropriate locations for such developments, management and tenancy details required. Consideration should be given to providing guidance to planning authorities when reviewing development and local area plans what appropriate policies and objectives should be included in their plans to address/provide guidance on the appropriate location and levels of concentration of such types of developments within their functional area.
- Reasonable Basis for Application - The Department should give consideration to including a similar stage to the planning application process for when housing developments revert to Planning Authorities as the consent authority. The SHD process has required applicants to submit details for consideration as to whether they constitute a ‘reasonable basis for an application’ as part of the pre-planning process. This encourages the submission of full particulars with the application and higher quality applications. The requirement for applications to be assessed and deemed to constitute a reasonable basis for application would ensure that a similar standard of application was made to Planning Authorities and potentially reduce the need to issue further information requests thus improving the speed of decision making at local level.

## Conclusion

Based on the arguments presented in Part 1 of this submission, The Irish Planning Institute advocates that the SHD mechanism should not be extended beyond the statutory SHD timeframe set out under the 2016 Act.

While SHD may have been introduced to fast track housing applications so as to deal with a housing crisis it should be only for a defined and limited period. There is real concern that the continuation, or any extension beyond the specified time period of the SHD mechanism could set a dangerous precedent for further categories of development to be legislated for under a similar ‘fast-track’ application process should market conditions dictate. Any legislative changes in response to relatively short-term market conditions would have far reaching consequences and would exacerbate the existing centralisation trend with local planning authorities and third-party rights being further undermined in the process. We therefore urge the Department of Housing, Planning and Local Government to restore planning powers to local planning authorities for large-scale housing development on or before December 2021.

Based on this assumption, the Institute believes the focus of the current review of the SHD process should be on supporting Planning Authorities in their role and improving the process at local level. The Institute has highlighted a number of suggestions in this regard. Specifically, we feel that there are a

number of lessons learned that can be implemented in order to ensure the successful transition of large residential applications back to local authorities including:

- The need for better resourcing of local authorities;
- Establishment of a special planning/environment law court;
- Introduction of a land/site value tax for sites that have received permission via the SHD Process

The Institute welcome the opportunity to discuss this submission further with the SHD Review Group appointed by the Department of Housing, Planning and Local Government on Tuesday 30 July 2019.

Yours sincerely

**Joe Corr MIPI**

**President**

**Irish Planning Institute.**