



**Irish Home Builders Association (IHBA)  
Submission on PLS of the General Scheme of the  
Planning and Development (Amendment)(Large-  
Scale Residential Development) Bill 2021**



The Irish Home Builders Association is a constituent  
Association of the Construction Industry Federation

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## **The Irish Home Builders Association**

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The Irish Home Builders Association (IHBA) is a constituent association of the Construction Industry Federation (CIF). The IHBA represents hundreds of home builders of all sizes across Ireland, offering support and advice to members, liaising with relevant authorities and key stakeholders on the issues impacting home builders. The association supports Irish home builders to deliver quality affordable homes to home buyers.

Our members will continue to contribute to the additionality of the public need in delivering much needed homes. Home builders will be working hard to supply these much-needed homes however it is important that critical issues such as planning and infrastructure, which are impeding delivery, are tackled.

## Residential Sector Sentiment

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Before Covid-19 the construction industry was on an upward trajectory with substantial investment planned to result in a steady increase of annual housing numbers across all tenures. IHBA members continue to report strong demand not least due to the under provision of some 80,000 homes over the past five years.

Within that same period the average first-time buyer age has increased by almost a decade to 35 years of age. In previous decades people in their 20's opted to buy apartments and get their foot on the property ladder in advance of trading up. This dynamic has changed in recent years with first time buyers renting until their early or mid-thirties and buying 3 or 4-bedroom houses instead of apartments.

The value of second-hand homes is increasing rapidly due to the large amount of people with mortgage approval bidding on properties and lack of stock available. House price inflation shows the stability in the rate of increase for new homes and the soaring rates of inflation in the 2nd hand market. Our members are assisting in keeping their prices steady while inflation is being driven by the 2nd hand market.

The industry continues to see a need for consumer supports with over 70% of first-time buyers opting to use the Help to Buy scheme where possible. Industry professionals report increasing transactions in commuter towns as house prices increase in Dublin coupled with stock reducing.

Construction activity has bounced back strongly after all residential projects were allowed to reopen on 12 April. Currently almost 19,000 residential buildings are under construction as of June 2021. This represents an increase of almost 40% yoy. This development reflects an emerging trend with building levels in June 2021 almost 4.3 times greater than they were five years ago.

Commencement data released by the Department of Housing, Local Government & Heritage (DHLGH) showed a 3.6% year-on-year (YoY) increase in the number of housing starts in the 12 months to May 2021. A significant share (38.1%) of the 25,501 commencements recorded during that time were reported in April and May 2021.

In terms of housing supply, the CSO revealed that the number of new dwellings completed in the four quarters to Q1 2021 was 19,592 units, a decline of 10.0% on the equivalent period to Q1 2020. Just 3,953 units were delivered in Q1 2021 (-20.1% YoY), as construction sites responsible for the development of private housing and private non-residential buildings were shut down.

The IHBA would expect somewhere in the region of 20,000 completions in 2021. A significant achievement given the industry was shut for almost a quarter of the year. However, because of activity been delayed by the pandemic and planning blockages, this uncertainty and risk could result in projects that were previously marginally viable some 12months ago, now rendered unviable.



## Judicial Reviews & Referrals to Europe - The Realities

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**Slowdown in Planning Permissions - It is well documented that Ireland's population is continuing to grow coupled with the average household size falling. Ireland has some 1.75m residential units, with an additional 1 million more required to 2050.**

IHBA members are seeing a concerning slowdown in planning permissions. The number of planning applications submitted during the period Q1 2021 in terms of units is down 29%. While some of this significant decline is likely a direct implication from the restrictions imposed over the first quarter of 2021, additionally the uncertainty and cost of planning means many members taking the undesired decision to hold back potential applications.

Granted schemes were also down some 26% and commencement notices lodged down 44%. Well documented factors impacting the planning system from issues with the Strategic Housing Development (SHD) system and the substantial rise in the number of Judicial Reviews has resulting in many schemes being substantially delayed or quashed entirely in the courts.

An Bord Pleanála have stated that some 29,000 apartments, 11,000 houses (approximately 4,000 social houses) and a further 10,100 student bed-spaces have been permitted under Strategic Housing Development (SHD) provisions. However, the delivery of planning permissions through the SHD process however has been severely curtailed in recent times with an explosion in the number of SHD planning approvals being quashed or stalled through Judicial Review. There has been a tenfold increase in the number of residential units in SHDs in Dublin quashed or held up due to judicial reviews (508 affected by judicial reviews in 2019, 5,802 in 2020).

On top of the delay caused by actions, most judicial reviews resulted in the permission being quashed. The applicant must then start the SHD process again, with the likelihood that objectors can launch another judicial review of any new decision. This slowdown in residential planning permissions will inevitably have an impact on housing supply.

In terms of stats, this reflects the ABP position from w/e 27<sup>th</sup> August 2021 in relation to units going through the Strategic Housing Development scheme:

- (1) 41 pre-apps pending opinion = 10,441 units.
- (2) 132 pre-apps determined pending SHD application = 41,134 units
- (3) 10 applications decided (granted) since early July (8 week JR period) = 2,412 units
- (4) 35 SHD applications pending decisions = 13,457 units

**Total units = 67,444**

While judicial reviews are more difficult to track, it is understood that there are some 28 pending. These comprise of 26 SHD grants (7,703 units) and 2 refusals (1,147 units) which totals 8,850 units.

## Impact of Referrals to European Court Justice on Residential Planning

Almost 75,000 units are either JR'd or exposed to JR's pending the determination of recent referrals to the European Court of Justice.

- (1) It has been interpreted that the Specific Planning Policy Requirements (SPPRs) within the Section 28 Building Height Guidelines are mandatory and therefore undermine the Environmental Impact Assessment (EIA) of a proposed development at planning application stage. Opinion was given that there is a risk that the SPPRs have a presumption in favour of policies e.g. height standards, that contravene a development plan and to an extent the outcome of a decision is pre-determined. Concern was cited that an EIA cannot have regard to SPPRs to mitigate or justify such a departure from the development plan that may otherwise be considered to have a significant adverse impact. This is one of two issues that have been referred to the ECJ.
- (2) The second issue referred to the ECJ relates to the status of masterplans and should they be subject to Strategic Environmental Assessment (SEA). Two situations involving a masterplan or similar are queried in this regard. The first is one that is jointly prepared and/or adopted by an authority at local level and a private developer. The second is the case of a (master)plan or similar, which is envisaged in the statutory Development Plan for the area, though in itself not binding, but which may result in a change to the impact of the Development Plan e.g. building height. Given that this only affects sites requiring a masterplan, the wider impact is considered less than the first issue and therefore not considered further in this note.

<b>Impact</b>	The impact of Issue 1 is, with immediate effect, any planning decision (both SHD and non SHD) that relies on Section 28 National Guidelines (SPPRs) is exposed to legal risk pending the favourable determination of this judgement.
<b>Impact</b>	While it is possible that this risk is only associated with EIA planning applications outside of SDZs, it is not clear as the screening process where an EIA is ruled in or out could be undermined by this issue.
<b>Impact</b>	An Bord Pleanála and Local Authorities are likely to continue to make decisions as normal and if not challenged, the developments will be unaffected. However, if challenged through Judicial Review (which is highly likely on the majority of successful grants), it is considered that these cases will be delayed until the determination of the ECJ case.
<b>Impact</b>	There is a documented increase in third parties through solicitors to legally challenge planning decisions, in particular SHDs. This judgement will significantly increase the number of challenges as one simply references this issue in the grounds of challenge, and they will be guaranteed to delay any judgement until after this referral is favourably determined.
<b>Impact</b>	In terms of a timeframe, legal advice suggests that such referrals take, on average, 18 months to be heard but this does not account for the length of time taken to hear the case or any subsequent appeals.
<b>Impact</b>	Based on (1) SHD pre-application schemes (2) SHD decisions and (3) SHD planning applications pending decision, there is an immediate and lengthy timing risk to 68,976 new homes. This does not account for non SHD developments or the projected large numbers of SHD applications likely to be lodged on or before February 2022 when the process is to be discontinued
<b>Impact</b>	Outside the housing sector, this could potentially affect all planning decisions relying on SPPRs in National Section 28 Guidelines

## Large Scale Residential Development (LSRD)

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The Governments stated intention for this bill is that these planning reforms would enable the planning system to become more responsive to the current challenges existing around housing delivery at local and regional level.

The bill in summary seeks to provide a time-bound mandatory pre-application consultation process with some similar measures that were provided for under the Strategic Housing Development (SHD).

The process would apply to large scale residential developments (LRSDs) between the prospective applicant and the relevant planning authority prior to the submission of a planning application for a 'LRSD' proposal.

The prospective applicant must first engage through a pre-application consultation under section 247 of the Principal Act with the relevant local planning authority in advance of making an application for planning permission. The relevant planning authority being the authority under which functional area the proposed development would be located.

Post the section 247 consultations, the applicant must request a "final consultation meeting" and receive an opinion from the planning authority under the new section 247A before proceeding to planning application stage, through the traditional Section 34 planning application process.

Interpretation of the Bill	
1	29th October 2021 is the last day for lodging an SHD pre-app request to ABP
2	31st December 2021 last day for lodging SHD application where ABP pre-app Opinion issued by 29th October
3	25th February 2022 last day for lodging SHD application where ABP pre-app Opinion issued after 29th October
<b>After such time Large Scale Residential Development applications will be made to the Local Authority.</b>	
4	Formal pre-app consultation with Planning Authority, leading to Opinion on pre-app from prospective applicant - 8 week timescale.
5	Definition of LSRD similar to SHD <ul style="list-style-type: none"><li>• housing schemes 100 units plus</li><li>• student accommodation schemes 200 units plus</li><li>• scheme provides for up to 30% non-residential use instead of 15%.</li></ul>
6	Limitations on further information (to be specified in regulations to follow)
7	The Board is required to make a decision on appeals for LRSD's within 16 weeks. This period is subject to certain qualifications.
8	Applications in SDZs are excluded from new arrangement and applications will be to the Planning Authority therefore under 'normal' S.34 process, except with no appeal to ABP as at present. The current SHD application option in SDZs will cease.

Recommendations for the Bill	
<b>1</b>	<p><b>Impact of Appeals</b> - No one would question the right of appeal and the need for a robust process for third parties. Likewise, everyone would agree that we are in desperate need of housing and the numbers speak for themselves.</p> <p>Appeals to An Bord Pleanála should have be more technical/specific and should have to reference where the PA decision was inconsistent with the Development Plan and/or national planning policy. ABP itself should only overturn a Planning Application where the application has made a technical or administrative error and should give specific detailed reasoning as to what the error was. The aim should be for decisions of the PA and ABP to be at least 90% consistent.</p>
<b>2</b>	<p><b>Transition from SHD to LSRD</b> – The draft transition away from SHD does not currently work as the dates do not reflect the actual time taken by ABP to issue Opinions and allow sufficient time thereafter to take on board their comments and lodge an application.</p>
<b>3</b>	<p><b>Resources &amp; Capacity</b> - The Local Authorities and An Bord Pleanála should be fully resourced to meet the mandatory timelines as set out within the Bill. <b>Appendix 1</b> - In terms of SHD timescales, the average time from pre-app lodgement to pre-app decision (Opinion) from 01/07/2020 to date is 17 weeks.</p> <p>Is there scope for overburdened Planning Authorities to contract out work to other Planning Authorities under less pressure?</p>
<b>4</b>	<p><b>Prescribed Bodies</b> - An applicant should advise the statutory bodies prior to submission of planning of their intention to make a planning application. The prescribed bodies would then engage and advise the applicants of any restrictions in terms of capacity/supply/resources. This interaction with the prescribed bodies should be used to determine capacity and or any technical issues that may prevent or delay bringing a scheme forward for planning. Prescribed bodies will need to equally engage at this stage and raise what are considered substantive issues to avoid unnecessary expense or delays to processing the application.</p>
<b>5</b>	<p><b>Economic Viability Assessment</b> - Planning permission is no guarantee of viability. While it may not be the ultimate rationale for grant or refusal a discussion on economics and viability is required. The issue of economic viability may be best addressed at the County Plan Preparation stage. Or potentially at pre-application stage an outline of requirements from the relevant authority, prescribed body, state or semi state body to meet national policy and requirements of the development plan should be discussed to allow an economic assessment.</p> <p>It is an inefficient use of time and resources on both the applicant and the assessing body to progress with an application that will never be commenced.</p>



<p><b>6</b></p>	<p><b>Mandatory Timelines &amp; Periods of Validity</b> – The bill suggests mandatory timelines for various stages of the LSRD process. Clarification is sought with regard to the situation where a third party, state of semi state body, prescribed body, through circumstances outside of the applicants control delay the meeting of said timelines. Will the applicant be afforded the opportunity to provide the necessary information at a later date?</p> <p>Some aspects of the information sought from EIR’s to seasonal surveys may be at odds to the timeline of application. Will previously dated information be accepted when the application process commences or when a request for information is posed to the applicant.</p> <p>The 8-week timeline for authorities to respond to compliance submissions where conditions have been met, as set out in the Finance Act 2018, should be signed into commencement.</p>
<p><b>7</b></p>	<p><b>Template for Applicants</b> – The level of onus on current applicants entering into large scale development applications is prohibitive. The cost and resources required to provide unnecessary information adds to the cost of delivery. Where a standard template of expectations and requirements was available to applicants it would streamline the process.</p> <p>The requirement to send hard copies to all statutory bodies should be digitised. Statutory bodies could be referred to the website. If needed a request for hard copies of specific reports/drawings could be made. The applicant should be able to upload the data to a central website maintained by the PA. All statutory body submissions and third-party submissions should also be uploaded to this website.</p>
<p><b>8</b></p>	<p><b>Further Information Requests</b> – Should be controlled and used cautiously. They can result in an unnecessary further delay to decisions.</p>

## Appendix 1

**SHD Timescales:** In terms of SHD timescales, the average time from pre-app lodgement to pre-app decision (Opinion) from 01/07/2020 to date is 17 weeks. This is based on 146 pre-app cases of those:

<b>1</b>	Approx. 57% of pre-apps were determined within 17 weeks (83 cases).
<b>2</b>	Approx. 43% of pre-apps took more than 17 weeks to determine (63 cases).
<b>3</b>	The longest pre-apps took 47, 34 and 31 weeks respectively.
<b>4</b>	Only 4 pre-apps (approx. 3%) were determined within the non-statutory 9-week period.