

Large-scale Residential Development – addressing previous shortcomings of the SHD scheme in Ireland



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With the phasing out of the contentious Strategic Housing Development (SHD) system, the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 came into effect on December 14th 2021, introducing a new planning process for Large-scale Residential Developments (LSRDs).

While the applicability of the LSRD scheme is largely unchanged to that of the SHD scheme (i.e. developments of 100 housing units or more, or student accommodation developments comprising 200 bed spaces or more, or a combination of same), the Act has sought to greatly improve the overall process with greater clarity and transparency, and more defined timelines, to address some of the perceived shortcomings of the SHD scheme. In our latest Insight article, Chris McCarry provides a brief overview of the LSRD process, as well as covering the impact of judicial reviews in the delivery of housing units

Overview of the LSRD process

One of the most contentious aspects associated with the SHD process was the fact that local authorities could be circumvented, and applications lodged directly with An Bord Pleanála. The LSRD amendment has reversed this, where plans must first be lodged with local authorities before the option for parties to appeal

LSRD process



1. Pre-application consultation stage

The applicant must seek a consultation pre-application under Section 247 247(7)¹ of the Planning Act, submitting specific documentation along with the meeting request. The local authority will then have four weeks to arrange the S247 meeting. i.e. 4 weeks to hold the LSRD meeting with the developer followed by 4 weeks for the local authority to issue an LSRD opinion.

2. Planning application stage

The LSRD opinion or determination issued under Section 247(7) will be valid for six months, in which time developers can progress the application stage.

3. Appeal stage

Should an appeal be lodged to the local planning board on the LSRD opinion, it is required to be determined within a 16-week window of receipt, with limited scope for “further information” requests.

1. Section 247(7) provides that for an application that proposes to amend an already approved SHD or LRD scheme

There are also a couple of key changes under the LSRD process compared to the SHD process that are worth noting:

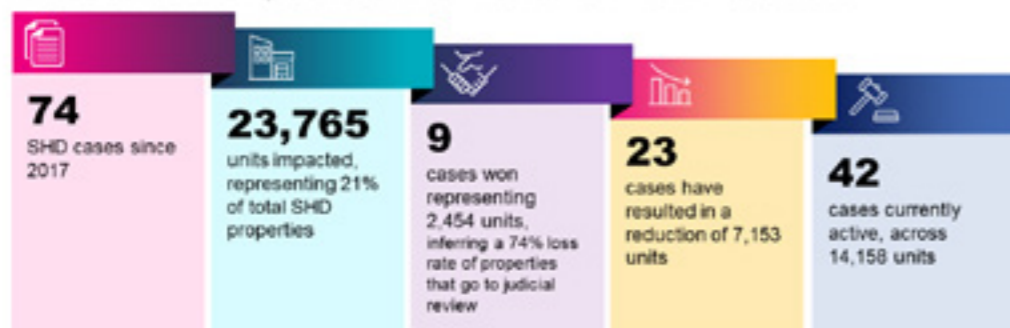
1. Where with the SHD process, there was a 15% cap on gross floor space of the proposed development for other uses, that has been revised upwards to 30% under the LSRD process
2. Judicial review can occur post-Board decision

Judicial reviews

Another of the more problematic aspects of the SHD process has proven to be the impact that the judicial review process has had on the delivery of approved housing projects, which the 2022 Housing for All Progress report states that the government are “nervous and concerned” about. As noted in our 2021 article, challenges via judicial reviews can have a significant impact on a project, in so far as increasing costs for developers, lengthening the schedule via unforeseen delays, leading to higher design team fees and inferring a high level of risk that a significant proportion of the homes approved by An Bord Pleanála will not come to fruition. This is against a backdrop in which Ireland continues to face an acute housing shortage and cannot afford for a protracted and convoluted process when it comes to large-scale residential development: “On average, SHDs are subject to waiting times of up to 60 weeks from initial planning application submission to court judgement. This leads to significant delays on the overall costs and potentially the overall viability of these developments”.² Recent analysis by the SCSi found that a delay of a year to a housing development caused by judicial reviews can add at least €8,000 to €12,000 to the cost of each new house, which in some cases can tip the scales of viability. Undoubtedly, the right to a structured system of legal redress for all is fundamental, but it should not have the potential to pose such a considerable threat to a housing market already under duress.

The infographic below summarises the outcomes of judicial reviews on SHD cases since 2017:

Outcomes of judicial reviews on SHD cases



Note: The above represents previous point-in-time data. However, more current data looking at the last 12 months shows that judicial reviews have continued to increase on SHD schemes by approximately 30%, which in our estimation equates to closer to 30,000 units currently affected and stalled.

Looking forward

The government has recently agreed on plans to overhaul the planning system with new legislation set to go before the Dáil in early 2023. This new draft legislation would make significant changes to the current operation of the planning system. The “Planning and Development Bill 2022”, identifies the following changes:

- New legislative change would give ministerial guidelines and policy directives stronger legal status
- Extends the lifespan of local government plans from six to ten years with an intermediate review after 5 years
- The bill would introduce statutory timelines for appeals and consent applications made to ABP (including Strategic Infrastructure developments)
- The bill will introduce changes to the judicial review process including timelines for various steps in the process and clarity around the role of different parties in seeking justice, now to be “taken by individual or individuals” (this would exclude resident associations from bringing challenges to the courts)
- The bill would include cost protection for judicial review cases, with no order for costs, unless the court considers that proceedings are “frivolous or vexatious, or an abuse of process”
- ABP would be re-structured and its decision making, and governance structure would be separated as part of the plan and renamed “An Comisiún Pleanála”
- A Chief Planning Commissioner and up to 14 full time planning commissioners would replace the current chairperson and board member



The previous planning system is considered outdated and addressing such policy areas are being hindered by an existing planning regime that is unnecessarily costly and cumbersome, and for most cases, led to significant delay. If the need to streamline the planning system to lessen the potential for logjam has at long last been recognised via the government. The new “Planning and Development Bill” should provide greater transparency and predictability for those providing housing in an effort to meaningfully tackle the housing crisis in a way that is conducive to the evolving needs of the broad population in Ireland.

Ultimately, the LSRD process is helping to enact applications as early as possible, providing more certainty to the industry, the planning authorities (including ABP), clients, developers, and the public for future proposals, and dealing with same. However, it is important to note that the relevant planning authorities and the new “An Comisiún Pleanála” will require additional professional resources for the governments new “Planning and Development Bill” to be successful.

Of the 210 permissions granted under SHD since the process was activated in 2017, just 72 of them have commenced to date, inferring that 138 submissions are yet to commence construction. This equates to just under 68,000 units granted permission under SHD, and by Q2 2022, commencement notices had been submitted for just under 14,000 of them. There is a pressing need to spur on building on undeveloped land which had already obtained planning permission, however the project needs to be financially viable without planning delays.

