



An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage

Regulation of Commercial Institutional Investment in Housing

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Guidelines for Planning Authorities

Ministerial Planning Guidelines under Section 28 of the Planning and Development Act 2000 (as amended), Regulation of Commercial Institutional Investment in Housing

1.0 Introduction

Section 28 of the Planning and Development Act 2000 empowers the Minister to issue planning guidelines to planning authorities and where applicable, An Bord Pleanála, regarding any of their functions under the Planning Act. Authorities must have regard to any guidelines issued under Section 28.

2.0 Purpose of Section 28 Guidelines regarding Institutional Investment

The recent phenomenon of commercial institutional investors bulk-purchasing, for market rental purposes, the majority of residential units in traditional lower density, housing estates consisting primarily of 'own-door' housing units, risks limiting the availability and choice of new homes available to individual purchasers, i.e. those not being a corporate entity, including, but not limited to, first-time buyers, and/or for the purposes of providing social and/or affordable housing including cost rental housing.

This is not desirable given the extent of housing need, where the delivery of new houses for market purchase by individual households to achieve home-ownership, is generally viable and might otherwise be achieved, and/or there is a need for the provision of social and/or affordable housing including cost rental housing.

While Section 28 guidelines are general in nature, each planning application for residential development will vary and requires individual assessment, based on the location, nature (including type of housing), extent and scale of the development proposed, and all relevant planning policy requirements and considerations.

Sections 34(4), 37G(7) and 39(2) of the Planning and Development Act 2000 (as amended), enable planning applications to be granted subject to condition. Planning conditions may be tailored to the specific circumstances of the planning application. Accordingly, an appropriate planning condition is an effective means of addressing the issue of commercial institutional investment, where considered necessary.

The purpose of these guidelines is to set out planning conditions to which planning authorities and An Bord Pleanála must have regard, in granting planning permission for new residential development including houses and/or duplex units. This is intended to ensure that own-door housing units and duplex units in lower density housing developments are not bulk-purchased for market rental purposes by commercial institutional investors in a manner that causes the displacement of individual purchasers and/or social and affordable housing including cost rental housing.

3.0 Current Planning Provisions for ‘Build-to-Rent’

Current planning policy enables planning applications for residential development to be specifically described as ‘build-to-rent’ (BTR) development at the application stage. This is set out in Chapter 5.0 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2020 and defines ‘build to rent’ development as:-

“ Purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord”.

It was envisaged that such purpose-built development would comprise higher density urban apartment schemes, to enable the delivery of viable long-term residential accommodation for rental purposes, and in particular to provide housing solutions for those for whom home-ownership may not be a priority or needed in their particular circumstances. This has been apparent to date, in cases where build-to-rent status has been sought at the planning application stage.

It is a further requirement of the Apartment Guidelines that any such build-to-rent development remains owned and operated by an institutional entity, and that this status will continue to apply for a minimum period of not less than 15 years. The Guidelines also specify that no individual residential units may be sold or rented separately, during that period.

As a result, a relatively small proportion of residential units permitted in recent years have been classed as build-to-rent development at the planning application stage. For example, 16% of the 50,000 dwellings permitted by An Bord Pleanála as Strategic Housing Development (SHD) from 2017 to early 2021, were specified as build to rent units at application stage.

Rather than specify ‘build-to-rent’ for planning application purposes, most development proposals are subject to applications for, and permitted as, general housing development. This enables maximum flexibility and can facilitate ‘build-to-sell’ type development, but it also enables any permitted development to be acquired in full or in part, for private rented sector (PRS) commercial investment purposes, without any specific ‘build-to-rent’ planning status.

This level of flexibility is considered necessary to facilitate broad investment in the delivery of increased housing supply, which remains critical. It therefore continues to apply to all apartment development, in order to ensure that undertaking such development remains viable, especially higher density schemes in established urban areas. As set out in these Guidelines however, this flexibility may no longer be applicable to ‘own-door’ housing units and duplexes, which generally comprise lower density housing development.

4.0 New Planning Provision for Restrictions on Use of Houses and Duplex Units

In order to give effect to the policy requirement to regulate commercial institutional investment in granting planning permission for certain types of new residential development, these guidelines set out two alternative planning conditions, further to Sections 39(2) and 47 of the Planning and Development Act 2000 (as amended), to which planning authorities and An Bord Pleanála must have regard, in granting planning permission for new residential development.

Section 39(2) of the Planning and Development Act 2000 (as amended) states that a grant of planning permission for a structure to be used a dwelling "...may also be granted subject to a condition specifying that the **use as a dwelling shall be restricted to use by persons of a particular class or description** and that provision to that effect shall be embodied in an agreement under [section 47](#)" of the Planning Act.

Section 47 of the Planning and Development Act 2000 states that "A planning authority **may enter into an agreement** with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement..."

Accordingly, a structure to be used as a dwelling to which these guidelines applies is:-

- a) A house, defined as not including a building designed for use or used as two or more dwellings or a flat, an apartment or other dwelling within such a building,

and,

- b) A duplex unit, defined as a dwelling within a building designed for use as two individual dwellings and/or on one shared plot, with separate entrances.

The persons of a particular class or description to which planning permission for new houses shall be restricted, by agreement are:-

- a) individual purchasers, i.e. those not being a corporate entity,
and,
- b) those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Further to the above, planning authorities and An Bord Pleanála shall, on granting planning permission for new residential development that is not specified as being for 'build-to-rent' purposes at planning application stage, have regard to the need to apply the following planning conditions, further to Sections 39(2) and 47 of the Planning and Development Act 2000 (as amended) in respect of all housing developments that include 5 or more houses and/or duplex units:

Planning Condition RCIIH 1:

for **mixed unit-type** development, comprising partly of houses and/or duplex units:-

- (a) Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

Or, Planning Condition RCIIH 2:

for an **all houses and/or duplex** unit-type development:-

- a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

It is reiterated that this policy requirement is applicable where such developments, or parts thereof, are not specifically categorised at the planning application stage (including described in public notices), as 'build to rent' development.

It is noted that any agreement pursuant to Section 47 of the Planning and Development Act and all correspondence received, including any documentary evidence submitted to the planning and housing authority regarding the sales and marketing of the housing units and any confirmation of the termination of the agreement by the planning authority in writing, should form part of the public file on

the relevant planning application. The planning and housing authority should also place any report drafted in consideration of an applicant's submission on the file.

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