

Review of Multi-Unit Development legislation – Policy position

Context

There have been apartments and multi-unit developments (MUDs - which can also include duplexes or houses in a managed estate or commercial units) in Ireland for decades. However, the past 20 years has seen strong growth in this form of housing with an 85% increase in the number of apartments between 2002 and 2016. Planning permissions for new apartments were 50% higher than those for houses in 2020. These are positive signs in the interest of more compact growth within our urban centres. With ongoing urbanisation, a move to greater housing densities and a lack of green space in urban areas, growth in the number of apartments and MUDs is likely to continue in the coming decades.

Many chartered surveyors advise developers and others in relation to apartments. The Society has in recent years prepared a number of reports on the costs of building apartments. It has also contributed to the revision of building regulations to support the construction of high-quality multi-unit developments.

As well as its input on the construction side, the Society is also the main professional body in Ireland for the property professionals who manage MUDs. These are often known as Managing Agents as they work as Agents to the owners' management companies (OMCs) who are responsible for managing the MUDs.

Issue

Prior to 2011, there was no national legislation in relation to how MUDs were managed, and their management evolved in a haphazard way with different approaches in different developments, often based on the approach of an individual developer.

This changed in 2011 when the government adopted the Multi-Unit Developments Act. Its adoption followed a period of discussions over several years in which the Society played an active part. The MUD Act defined a MUD as being a development of at least five residential units. It also addressed a range of standard issues in the management of MUDs including the transfer of the common areas to the OMC; the appointment of OMC directors; voting in OMCs; how AGMs should be organised; what information should be circulated to OMC members; guidance on establishing a Sinking Fund; setting House Rules; and other matters.

The MUD Act was an important step forward and its effects have been positive on the sector in the decade since its enactment.

A second piece of legislation, the Property Services (Regulation) Act, was also adopted in 2011. One effect of this was a requirement for the licensing of all property professionals who

manage MUDs, many of whom are Society members. A system of mandatory CPD for property managers was introduced.

Despite these positive developments, the continuing strong growth in MUDs together with the learning of recent years suggests that further change is required to underpin the further expansion in apartment living in Ireland in the decades ahead.

In proposing further change, the Society firstly draws on the views of its members who are on the coalface as regards the management of MUDs. It also draws on the SCSi 2018 report on Sinking Funds in MUDs. A further input is the 2019 report 'Owners' Management Companies – Sustainable Apartment Living for Ireland', authored by Paul Mooney and funded by the Housing Agency and Clúid Housing, which sets out recommendations for the MUD / OMC sector. In making the proposals below, the Society notes also the very positive work of the Housing Agency in recent years as regards supporting MUDs and OMCs and hopes that this work can be built on in the years ahead.

The proposals below are separate to the important issue of legacy construction defects as identified in many MUDs. This issue is being addressed by a specific working group established by the Minister for Housing, Local Government and Heritage in February 2021, on which the Society is represented. The points below relate to the longer-term good management of MUDs in Ireland.

Proposals

1. Sinking Funds

There is considerable evidence that the majority of OMCs and MUDs face large shortfalls in providing for future investment needs. The MUD Act sets out that a 'Sinking Fund' or 'Building Investment Fund' shall be built up over time and that this will be the source of funds for the refurbishment and upgrade projects that are normally required in any development in the longer-term. However, SCSi 2018 research showed that 78% of property managers believed that under one-quarter of the MUDs that they worked with had adequate Sinking Funds. Even that most likely overstates the level of provision in place. The truth is that as apartment developments age, OMCs are severely underfunded as regards the replacement of roofs, lifts, fire alarms, road surfaces, carpets etc. never mind any upgrades required.

While the MUD Act contains a section on Sinking Funds, this has proved insufficient to ensure adequate Sinking Funds in MUDs. The Society also acknowledges efforts in recent years to require preparation of 'Building Lifecycle Reports' as a part of the Strategic Housing Development (SHD) process. However, despite this, the vast majority of OMCs are very underprepared for future investment needs.

Section 19(9) of the MUD Act permits the Minister to make further regulations in relation to Sinking Funds "for the purpose of advancing the objective of the fair, prudent, effective and efficient operation of OMCs and the fair, prudent, efficient and effective management of the common areas of MUDs".

The Society believes that the Minister should now engage in a discussion process with relevant stakeholders and then make such regulations. The Society will feed into these discussions but, in the meantime, we would suggest the following:

- A detailed Life Cycle report, to include costings, should be prepared at the start of the life of any new MUD and handed over to the MUD and to each new property owners at the outset.
- An update in relation to such a report should then be prepared at regular intervals, e.g. every five years, to set out how the building is aging and how the investment needs are evolving over time;
- It should be made clear that each OMC must have a separate bank account for its Sinking Fund and it is not sufficient to have a 'notional' account for the Sinking Fund in its accounts;
- Enhanced information should be provided each year to all property owners in a MUD on the balance in the Sinking Fund and its adequacy or otherwise. This can build on the information already provided in relation to the Sinking Fund.
- Guidelines could be provided to those preparing OMC financial accounts as regards the need to show clearly the amounts held in any Sinking Funds.

2. Establishment of a National Authority to Support and Oversee OMCs

Almost all OMC Directors are property owners who take on this role on a voluntary basis. There is no body to which these owners can turn for support. We believe a national OMC authority or regulator should exist to support this important sector. Such a body could also undertake a number of other functions, for example:

- Maintain a register of OMCs in Ireland;
- Collect data on OMCs and potentially take on the role of collecting annual returns from OMCs from the Companies Registration Office;
- Potentially take over the role currently with the courts as regards the significant problem of the collection of service charge arrears;
- Potentially have a mediation or arbitration role for disputes linked to House Rules and other matters;
- Potentially support OMCs on fire safety and other safety matters, to include the provision of technical advice;
- Carry out research in the interests of OMCs and their owners;
- Potentially intervene where OMCs are failing in their duties.
- Consider the establishment of a developer bond to be in place and redeemable when all information is transferred to the OMC. Such a bond could be included with existing bond requirements that developers would have with local authorities for infrastructural agreements

The above is an indicative list and precise functions / organisational architecture would need to be discussed further. Models exist elsewhere (e.g. Ontario) which can provide learning on this matter.

3. Other Changes

The establishment of a new authority would require new legislation and such legislation could provide an opportunity to address other matters that require to be addressed. Among these are the following:

- A need to develop training modules for OMC Directors and consideration of whether completion of such modules should be compulsory;
- Other clarifications on the role of OMC Directors, whether they can receive remuneration and whether non-members can be appointed as Directors;
- Potential enhancement of the information supplied annually to all OMC members;
- Support for OMCs who wish to borrow to fund necessary capital projects;
- A review of the current Schedule 3 of the MUD Act, which sets out the range of documentation to be handed over by the original developer to the OMC. Possible sanctions for the non-transfer of this documentation could also be examined;
- Possible obligation in relation to the block insurance policy that OMCs prepare a building reinstatement valuation at least every five years.

Government Review of MUDs Sector

The 2020 Programme for Government contains a short section entitled 'Management Companies'. In it, the government states: *"We will conduct a review of the existing management company legislation, to ensure that it is fit for purpose and that it acts in the best interests of residents."*

The SCSi looks forward to feeding into this review. In the meantime, we will work with other stakeholders, including the Apartment Owners' Network, Clúid Housing, the Housing Agency and others to develop a common understanding of challenges facing the sector and potential solutions to them.

SCSi, April 2021