SCSI

Chartered property, land and construction surveyors

Affordable Housing

SCSI Policy Position

RICS®

'Use it or lose it' legislation

Introduction

There are proposals to introduce legislation with the intention to remove statutory planning consents previously granted for a period of 5 years to development land that is not developed within a specific timeframe.

The Society is concerned that the passing of this proposed legislation as it currently stands is problematic and recommends that changes are implemented so that this does not inadvertently inhibit further new developments. The property, construction and investment markets look less favourably on regular policy interferences in the sector as this can make feasibility forecasting more difficult and riskier. With the advent of more risk, comes higher costs. By removing volatility in the market, this can help towards a more stable environment where forecasting is made more predictable.

The overarching objective of the 'use or lose' legislation appears to enforce commencement periods on sites within the first 18 months since planning grant. However, residential development is complex and there can be an array of reasons why development may take many years to commence, much of which is beyond the control of developers. In practical terms, it will not be possible for the construction and development sector to immediately construct on lands that receive planning consent, given the variety of procedures and statutory processes required in advance of commencement.

The delivery of new houses and apartments is a critical requirement for our growing population, and the SCSI are fully supportive of measures to ensure that projects are commenced and completed to provide much needed homes. It is important that any policy change introduced is considered fully and that the likelihood of success and potential consequences thoroughly assessed.

Table 1 – Number of planning consents and completions

2016 to Q2 2021			
	Planning Consents (units) in 4.5 year period	Completions (units) in 4.5 year period	Variance
Housing Scheme	56,938	52,920	-7.06
Apartments	59,344	15,920	-73.17

As shown in table 1, just 7% of units (houses) that were granted permission, did not get completed over the period 2016 to Q2 2021. This is in sharp contrast to the apartment development sector, where 73% of planning consents did not get completed.

Why are so many apartments not being completed?

There is a five-year limit on existing planning permissions, whereby if they are not commenced, the permission lapses. This is already in the market as a statutory limit and so acts as an incentive in the existing situation. The issue is not the length of time that the permission exists, but financial viability, finance availability particularly post-covid, the complexity of schemes, the JR process of SHD's, service connection issues and general complexity of apartment schemes.

The high number of planning permissions granted for apartments vis a vis completion is a concern for the new homes sector. The implementation of a clause to develop within a tight period of achieving planning permission may not necessarily be a successful policy response to stimulate supply.

Some background to the issues and proposed recommendations are outlined below, including some advice should the 'use it or lose it' clause be enacted:

Development Land Register

There are some concerns by policy commentators that development land that has received planning consent is not being brought to development stage whereby new housing is delivered at volumes required to meet current and future housing needs. The Central Bank of Ireland's Housing Needs Assessment forecasts that new units of approximately 34,000 are required annually up to 2030 at least. At present, Ireland is delivering approximately 20,000 new units to the market, and given covid-19 related issues, this undersupply is expected to continue.

There is currently insufficient evidence to reach a conclusion that land appreciation is the main reason why developments do not proceed. It is important that any policy made is evidence-based. This paper provides a wider view of the challenges facing new development and sets out recommendations to address these which will assist with many of the practical reasons where developments do not proceed.

Possible reasons for projects being delayed

<u>Judicial Reviews</u>

The utilisation of Judicial Review's increased tenfold between 2019 and 2020. This means that development that received planning consent through the Strategic Housing Development (SHD) process or by a local authority, almost 5,800 units in Dublin were affected by Judicial Review out of the 32,000 that received planning permission for apartments and multiunit developments during this period in Dublin.

Government has committed to ending the SHD process with a planning permission review to take place in 2021/2022 in an effort to streamline the process and connect with communities on plans at an earlier stage. However, at present, JRs are adding considerable time to the panning permission process. It is also adding additional costs to the supply of new units, of between €8k to €12k per unit per year[1]. Currently JRs are taking 6-9 months and we are aware of a recent JR as an example that is scheduled for more than 12 months after the leave was granted. This also adds substantially to the delay in progressing with the delivery of housing.

[1] SCSI Assessment of JR costs – July 2021

Recommendation: If such as ‘use or lose’ law is introduced a time-frame should commence from when final grant ratified (i.e. after timeframe for JR has passed) and when any service connections are available that may be required to progress a development

Complexity

Apartment buildings are particularly complex construction projects given the height, layout and structure. Seeking adequate finance and having an adequate supply of labour to deliver construction projects can lengthen lead-in times. For example, market changes can impact lead times, and this was evident in recent years when much of the 100,000 construction workforce preferred providing services on commercial projects i.e. office/retail/industrial.

Recommendation: Labour market challenges should be considered in any such ‘use or lose’ regulation as it is possible for the delays in construction to include lack of available skills.

Investment in home building

Increased investment for the delivery of housing to meet demand is welcomed as part of Government’s ‘Housing for All’ plan. Regular policy changes can have a devastating impact on the market and if policy changes become too severe and too frequent. This has a tendency to make investment in the sector less attractive. Ireland is already known in the international investment market as a geographical jurisdiction prone to policy changes which is considered higher risk.
For example, if as development land with grant approval comes close to planning expiry, there is a risk that the development will not reach substantial completion by the date of planning expiry and thereby not achieve compliance with the proposed ‘use or lose’ clause if implemented as intended. This regulation may exacerbate that risk and will likely discourage landowners/developers from commencing development if it is not certain that all units will achieve substantial completion. It will also make it more difficult to get finance for a project if there is planning uncertainty. For example, if a developer is half-way through a project and the planning expires, funding will be withdrawn. The site will usually be security for a loan and a funder will not lend with such uncertainty. In fact, if there is a programme risk of this nature, it is highly unlikely the development would be financed and commence in the first place.

Recommendation:
Timeframe for the ‘use it or lose it’ to apply should reflect a reasonable provision of time to allow for the elements of the development process including detailed design and review, tender preparation, tender circulation, responses, assessment of tender and related interviews if applicable, contract negotiations, provision of finance, compliance with any planning conditions required in advance of commencement on site.
Incentives to entice the delivery of affordable homes to the market within a suitable timeframe should

be considered i.e. remove development contribution liabilities if commenced within a certain time period.

Planning first and assess viability

Developers will engage and seek planning permission which can often come with restrictions, planning conditions or a stimulation regarding design and density requirements. All of which can impact viability. The viability assessment is an exercise that developers will often perform post planning consent as a result of conditions and this takes time to conclude before a development can be treated as a viable project to commence. By placing a further time bound restriction may not alleviate this issue but instead may create more significant issues and less housing completions.

Recommendation:

Should another planning application be prepared and submitted for the same site, it is proposed that the timeframe would recommence from the decision of that planning permission, on the condition that the latter planning application is materially different from the initial.

In conclusion, we welcome any initiative to stimulate affordable supply to the market, however this proposed legislation will add further risk and therefore further costs to the new home's market. It is therefore the view of the Society that the proposed legislation is not enacted in its current wording rather to change to provide further supports to a sector to enable quicker commencement on sites by removing delays.