



An
Coimisiún
Pleanála

Inspector's Report ABP-321515-24

Question

Point of detail dispute regarding condition no. 8 attached to ABP-307092-20.

Location

Lands at Palmerstown Retail Park,
Kennelsfort Road Lower,
Palmerstown, Dublin 20

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

N/A

Applicant for Declaration

Randleswood Holdings Ltd

Planning Authority Decision

N/A

Referral

Referred by

Randleswood Holdings

Owner/ Occupier

Randleswood Holdings

Observer(s)

N/A

Inspector

Karen Hamilton

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1.0 Background

- 1.1. The point of detail referral is pursuant to the provisions of Section 34 (5) of the Planning and Development Act (as amended) in relation to a condition of permission attached by the Board (now the Commission) under reference ABP 307092-20, a Strategic Housing Development for the demolition of structures and construction of 250 no. Build to Rent apartments and associated works.
- 1.2. Section 34 (5) allows the Commission to adjudicate on a point of detail of a condition which can not be agreed between the planning authority (PA) and the permission carrying out the development. In this case, the applicant (Randelswood Holding Limited (RHI)) has referred a query on Condition No. 8 to the Commission as compliance with the terms of this condition cannot be agreed with the Planning Authority.

2.0 Condition No. 8

2.1. Condition No 8.

Prior to the commencement of development, the owner shall submit to and agree in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.

Reason: In the Interest of proper planning and sustainable development of the area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a notification of decision on the 05th of December to state that the submission received from the applicant was not in compliance with Condition No. 8.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning compliance section notes the following in relation to the submitted Section 47 Agreement:

- South Dublin County Council (SDCC) requires the submission of 2 no hard copies of the Section 47 Agreement with the developer's seal and signatures in order to discharge this condition. In this instance the Section 47 Agreement has been submitted electronically without the developer's seal a signature.
- The submitted Section 47 Agreement does not appear to be fully in accordance with the template South Dublin County Council use and provides for the sale of individual blocks/units,
- It is noted that the fifth Schedule does not include the File Reference, as required.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

4.1.1. ABP 307092-20

Strategic Housing Development granted permission for the demolition of existing structures and the construction of 250 no. Build to Rent apartments and all associated site works. The permission was subject to 23 no conditions of which the following are of note:

Condition No.6: The development hereby permitted shall be for 250 residential units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

Reason: In the interest of the proper planning and sustainable development of the area

Condition No. 7: Prior to commencement of development on site, the developer shall submit, for the written agreement of the planning authority, details of the Management Company, established to manage the operation of the development together with a detailed and comprehensive Build-to-Rent Management Plan which demonstrates clearly how the proposed Build-to-Rent scheme will operate.

Reason: In the interests of orderly development and the proper planning and sustainable development of the area.

Condition No.8: Prior to the commencement of development, the owner shall submit to and agreed in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.

Reason: In the interests of proper planning and sustainable development of the area

Condition No. 9: Prior to expiration of the 15-year period referred to in the covenant, the owner shall be submitted to and agreed in writing with the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity

4.2. **ABP 309899-21**

S 146B request to alter a previously permitted SHD development ABP-307092-20, considered not to constitute a material alteration. The works relating to internal and external design of Blocks A and D, with associated alterations to the previously permitted basement and landscaping proposals. No alterations are proposed to the previously permitted Blocks C, D and E.

5.0 Policy Context

5.1. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities

The proposal was granted in 2020 and assessed under the 2018 Section 28 Guidelines. These have been updated in 2020 and 2022. Reference to the ownership requirements for Build to Rent Schemes remains the same in all versions of these Apartment Guidelines.

Section 1.12: 'Build to Rent' are rental only developments that are subject to centralised management arrangements, on a long-term basis, where individual units may not be separately sold for a specified period.

Ownership

Section 5.3: Ownership and management of BTR developments is usually carried out by a single entity that invests in the project as a long-term commercial rental undertaking. This critically means that individual residential units within the development are not sold off separately for private ownership and/or subsequent sub-letting individually

Section 5.4: This characteristic of a BTR development differentiates it from a traditional housing development model where residential units can be sold or owned individually within a management structure that is typically independent of ownership of the apartments (i.e. 'Build To Sell' – where units are built for individual sale on completion and 'Buy to Let' – where individual investors purchase a unit(s) for subsequent rental).

5.2. South Dublin County Development Plan 2022-2028

The site is located on lands zoned for Village Centre (VC) where it is an objective 'To protect, improve and provide for the future development of Village Centre'.

Policy H1 Objective 12:

Proposals for residential development shall provide a minimum of 30% 3-bedroom units, a lesser provision may be acceptable where it can be demonstrated that:

- there are unique site constraints that would prevent such provision; or
- that the proposed housing mix meets the specific demand required in an area, having regard to the prevailing housing type within a 10-minute walk of the site and to the socioeconomic, population and housing data set out in the Housing Strategy and Interim HNDA; or
- the scheme is a social and / or affordable housing scheme.

Note: Build-To-Rent (BTR) residential developments shall comply with the Sustainable Urban Housing: Design Standards for New Apartments (2020) (or any superseding Section 28 Ministerial Guidelines)

5.3. Natural Heritage Designations

None of relevance

6.0 EIA Screening

- 6.1.1. The proposal to alter a S47 agreement and compliance of conditions, is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

7.0 The Point of Detail Referral

7.1. Referrer's grounds for determination by An Bord Pleanála

- 7.1.1. Pursuant to the provisions of S.34 (5) of the Planning and Development Act and in view of the disagreement between the applicant and the local authority the applicant is seeking a determination by the Board. The Board is requested to confirm the applicant's position in respect of complying with the terms of condition No. 8.
- 7.1.2. The case is made that:

- Pursuant to Section 47 of the PDA ACT, 2000 as amended efforts have been made by Randalswood Holdings Ltd (RHL) (applicants), DOWNEY (agents) and RHL's Lawyers (Ogier Ireland Ltd) since 2001 to reach an agreement.
- Based on previous use-cases in other local authorities and the fact that Co-operation Housing Ireland (CHI) via SDCC, sought to acquire 93 units (including only 25 as Part V housing), it is sought that the Section 47 Covenant template (original provided by South Dublin County Council (SDCC)) is amended.
- The amendments proposed in the draft Section 47 covenant have not been accepted by SDCCC on several occasions, most recently on the 05th of December 2024.
- An email from SDCC Housing Procurement Section (Appendix 2) stated that they are happy to support CHI Ltd acquiring 93 properties (including 25 Part V Properties). It was agreed that formal consent for the sale of the CHI Units would not breach the terms of Section 47 agreement.
- The S47 agreement had not been formally approved by SDCC prior to the completion of the CHI Units.
- A strict interpretation of the current S47 covenant template provided by SDCC could potentially prevent either CHI or RHL transferring their interests in their units to another institutional entity.
- It should be noted that the amendments proposed to the S47 covenant template have been agreed with several other local authorities such as Dublin City Council and Dún Laoghaire-Rathdown Council.
- The amendments proposed provide the owner of the BTR development to sell a Block within a development to an institutional owner and such as sale would be deemed to constitute a permitted sale under the terms of the covenant.
- The rationale for this is linked to the BTR model for the delivery of purpose built residential rental properties.
- Ogier have acted for several developers with several local authorities and have never had any material issues.

- Oiger understand that the BTR model prohibits the sale of individual units, where this proposal includes the joint-institutional ownership of a development.
- In this development, RHL has sold the CHI units to CHI. A covenant has been put in place to ensure all the future owners of all the block within the development work cohesively together to ensure the development works as envisaged by the planning permission.
- An owner's management company has been established to manage the development. The changes tabled in the Section 47 template reflect this position (appended to appeal).
- SDCC reason not to accept compliance is noted and states the submitted S47 agreement provides for the sale of individual residential blocks/units.
- SPPR 7(a) requires that no individual units are sold and does not expressly limit BTR developments to be owned or separately operated in joint-institutional ownership.
- SPPR 7(a) prohibits the sale of individual units, not blocks. The development will remain owned and operated by an institutional entity.

7.1.3. Appendix 1: Draft Template S47 Covenant

7.1.4. Appendix 2: Email from SDCC in relation to its consent

7.2. Planning Authority Response

No response received.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000, as amended

Section 34(5) states:

The conditions under *subsection (1)* may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to

whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination:

The Act was amended by Substituted (17.12.2021) by Planning and Development (Amendment) Act 2018 (16/2018), s. 23(4), S.I. No. 714 of 2021.

The conditions under subsection (1) may provide that points of detail relating to a grant of permission be agreed between the planning authority and the person carrying out the development and, accordingly:

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either:

(i) reach agreement with that person on those points, or
(ii) where that authority and that person cannot so agree on those points, that authority may—

- (I) advise that person accordingly in writing, or
- (II) refer the matter to the Board for its determination,

and, where clause (I) applies, that person may, within 4 weeks of being so advised, refer the matter to the Board for its determination, or

(b) where none of the events referred to in subparagraph (i) or in clause (I) or (II) of subparagraph (ii) occur within those 8 weeks or such longer period as may have been so agreed, then that authority shall be deemed to have agreed to the points of detail as so submitted.

9.0 **Assessment**

9.1. **Background**

- 9.1.1. The Strategic Housing Development (SHD) development, ABP 307092-20, has been constructed and occupied and is known as Palmers Gate. A dedicated website for the housing scheme ¹ indicated that the properties can be rented monthly. The

¹ [Palmers Gate | Apartments in Dublin 20, IE](#) (accessed 25th of October 2025)

development comprises of 5 no apartment blocks (Block a, Block B, Block C, Block D and Block E) and associated commercial and residential amenity area. The applicant has been in negotiations with South Dublin County Council (SDCC) in relation to compliance with a condition relating to the sale of an apartment block to Cooperative Housing Ireland (CHI) on several occasions, beginning in April 2021. SDCC have not accepted the applicant's Section 47 Agreement. Hence the applicant has referred this dispute to the Commission.

9.2. Draft Section 47 Agreement

- 9.2.1. In general, the applicant wants to sell a block of apartments to Co-operative Housing Ireland (CHI) for the purpose of renting out the units as an institutional landlord. The written appeal submission does not detail which apartment block it specifically refers to although I note Appendix 1 includes a Draft Template S27 Covenant and that section which refers to Operative Provisions, No. 2 (a) includes additional text as highlighted in bold below:

No. 2. Nothing in this Deed shall prohibit:

- a) a sale, grant, letting or other disposal made in pursuance of an agreement made with the Planning Authority pursuant to Part V of the Planning Acts, **PROVIDED FURTHER that it is further acknowledged that a disposal of all Block E and Apartments 1-30 comprised within Block D to Co-operative Housing Ireland, and its successors and assigns, shall not be prohibited;**

- 9.2.2. SDCC have not accepted the applicant's proposed amendments to the S47 Agreement. It is considered the draft agreement is not in compliance with the council's requirement (i.e. 2 no hard copies submitted and the developers seal and signatures., does not follow the SDCC template and does not include a file reference in the Fifth Schedule) and provides for the sale of individual residential blocks/units.

9.3. Condition No. 8

- 9.3.1. In the first instance, I draw the Commission attention to references within the submitted documentation to Condition No.8. The applicant's appeal documentation states the dispute relates to condition No. 8 and quotes the following condition:

Prior to the commencement of development, the owner shall submit to and agree in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.

9.3.2. From a review of the documentation, I note the final grant of permission includes a number of conditions relating to the operation and ownership of the proposal as details in Section 4.0 above and summarised below:

- Condition No. 6: the 250 units shall operate in accordance with the definition of BTR in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) with no portion used for short term lettings.
- Condition No.7: the development shall be managed by a Management Company, details submitted for the written agreement of the PA, including how it complies with the BTR scheme.
- Condition No.8: Prior to the commencement of development, the owner shall submit to and agree in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.
- Condition No 9: Prior to expiration of the 15-year period referred to in the covenant, the owner shall be submitted to and agreed in writing with the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

9.3.3. Having reviewed the final grant of permission, I consider the condition quoted in the applicant's documentation relates to Condition No.8.

- 9.3.4. SDCC final notification of decision 'Notification of decision regarding compliance submission ABP-307092-20/C8-2', includes reference to Condition no. 8 as follows:

Prior to expiration of the 15-year period referred to in the covenant, the owner shall be submitted to and agreed in writing with the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

- 9.3.5. I note this condition is not the same Condition No.8.quoted by the applicant in their documentation or Condition No 8 on the final Board order for ABP- 307092-20. I consider the compliance quoted in the PA final notification of decision is incorrect although I am satisfied the PA assessment relates to the current condition, No.8. This aside, I consider the S47 Agreement is relevant for compliance for several of the conditions of the final grant such as those required for ownership, operation, title and BTR management as noted above. I do not consider this discrepancy precludes the Commission for concluding the dispute before them. Therefore, I propose that the Commission continue to use the reference to Condition No.8 as per all the documentation and the Board Order for ABP-307092-20.

9.4. **Built-To-Rent (BTR)**

- 9.4.1. The proposal was granted for 250 BTR units. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities ("Apartments Guidelines") sets out the parameters for BTR developments to operate. The conditions imposed reflects the requirements of these guidelines as summarised below:

- 9.4.2. Build-To-Rent and Shared Housing Developments

Ownership and management of BTR developments are usually carried out by a single entity that invests in the project as a long-term commercial rental undertaking. This critically means that individual residential units within the development are not sold off separately for private ownership and/or subsequent individual sub-letting.

This characteristic of a BTR development differentiates it from a traditional housing development model where residential units can be sold or owned individually within a management structure that is typically independent of ownership of the apartments (i.e. 'Build To Sell' – where units are built for individual sale on completion and 'Buy to Let' – where individual investors purchase a unit(s) for subsequent rental).

- 9.4.3. The applicant argues that the restrictions on the ownership, operation and management of BTR units relate to a prohibition on the sale of individual units, rather than blocks. The applicant proposes to sell two blocks to CHI, 93 units (including only 25 as Part V Housing). I note no restriction in either the national guidelines precluding the sale of apartment blocks.
- 9.4.4. SDCC consider the submitted Section 47 Agreement is not fully in accordance with the template SDCC use and provides for the sale of individual blocks/ units (the development as assessed and permitted as a Build to Rent scheme). As stated above, the national guidance for BTR developments prohibits the sale of individuals units, not residential blocks. I do not consider the sale of Blocks to CHI would be contrary to the national guidelines for BTR developments.

9.5. **Conclusion**

- 9.5.1. This Point of Detail relates to the applicant's dispute over compliance with the following condition no.8:

Prior to the commencement of development, the owner shall submit to and agree in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.

- 9.5.2. As stated above, SDCC final decision refers to both the template of the S47 Agreement submitted and the potential sale of individual residential blocks/ units. Condition No. 8 specifically excludes the sale of individual residential units, in line with the national guidelines for BTR developments. It does not preclude the sale of

Blocks. Therefore, I consider the sale of blocks to CHI is not contrary to any requirements of conditions imposed on ABP 307092-20.

- 9.5.3. The applicant, in their appeal statement, states that the existing residential scheme will operate in compliance with the remaining conditions. A Management Company is in operation, and it is stated that a covenant has been put in place to ensue all the future owners of all the blocks within the development work cohesively together. I am satisfied the sale of an apartment block to CHI is in keeping with Condition No. 8.

10.0 Recommendation

It is my recommendation that the Commission determines that:

The sale of an apartment Block to Co-operative Housing Ireland (CHI) is acceptable in relation to conditions for ABP 307092-20, Condition No 8. This is based on the following reasons and considerations.

11.0 Reasons and Considerations

The Commission had regard to:

- (a) Section 34(5) of the Planning and development Act 2000 as amended, and
- (b) the nature and extent of works covered by a range of conditions under ABP307092-20, which relate to the whole site, specifically Condition No. 8, and
- (c) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities.

12.0 Condition No. 8 as determined

Prior to the commencement of development, the owner shall submit to and agreed in writing with the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be let or sold separately for that period.

Reason: In the interests of proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Karen Hamilton

Assistant Director of Planning

28th of October 2025

13.0 Appendix 1 - EIA Pre-Screening – Form 1

An Bord Pleanála Case Reference	ABP-321515-24		
Proposed Development Summary	Point of Detail for compliance of conditions in respect of SHD ABP30792-20		
Development Address	Palmerstown Retails Park, Kennelsfort Road Lower, D20		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	X
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			

Yes			Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?		
No	X	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____