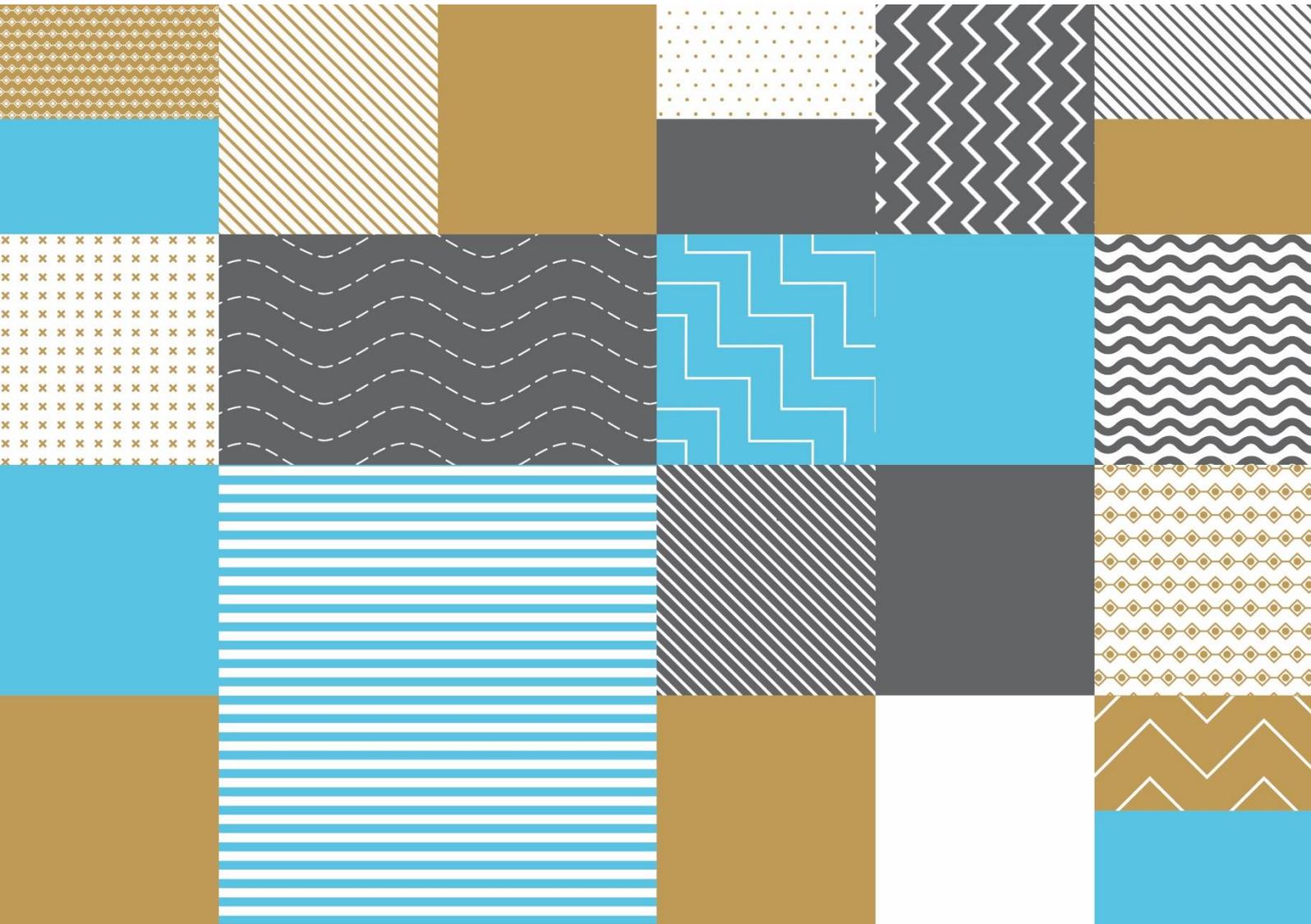


An  
Bord  
Pleanála

**Strategic Housing Development**  
**Section 4 Applications to An Bord Pleanála**  
**Guidance for Applicants**



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## Strategic Housing Development

### Section 4 Applications to An Bord Pleanála

#### Guidance for Applicants for SHD to An Bord Pleanála

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#### **Planning and Development (Housing) and Residential Tenancies Act 2016 Planning and Development (Strategic Housing Development) Regulations 2017**

Section 4 applications for strategic housing developments (SHD) are to be made directly to An Bord Pleanála. These new arrangements are operational from Monday, 3 July 2017 and will apply for the period up to 31 December 2019, at which time the period may be extended to 31 December 2021, subject to a review process.

An Bord Pleanála has published general guidance in respect of the various new procedures introduced in the Act of 2016. This document is one of a suite of documents relating to SHD applications to An Bord Pleanála. Further guidance is available in respect of Pre-Application Consultations for SHD to An Bord Pleanála and of section 7 requests for EIA / AA screening determinations / scoping opinions to An Bord Pleanála.

#### **What is Strategic Housing Development (SHD)?**

SHD is defined under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 as:

- (a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,
- (b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon,
- (c) development that includes developments of the type referred to in paragraph (a) and of the type referred to in paragraph (b), or containing a mix of houses and student accommodation or

- (d) the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph (a), (b), or (c).

### **Legislative Basis for SHD**

Section 4(1) of the Planning and Development Act 2016 provides that an application for permission for a strategic housing development (SHD) shall be made directly to An Bord Pleanála under this section and not to a Planning Authority.

## **SHD Applications Overview**

This document provides advice on the following aspects of SHD applications:

- Requirements for applicants prior to making a SHD application
- The SHD application process
- The Board Decision

## **Requirements for Applicants Prior to Making a SHD Application**

The Act of 2016 and the Regulations of 2017 require that applicants fulfil certain requirements prior to making an application under section 4. The applicant is required to have:

- **Carried out a consultation with the Planning Authority** under section 247 of the Planning and Development Act 2000-2016.
- **Sought and received an Opinion from An Bord Pleanála** under section 6(7) of the Act as to whether documents submitted at pre-application stage constitute a reasonable basis for an application.

- Fulfilled the requirements of section 8 of the Act and articles 292, 293, 294 and 295 of the Regulations in relation to **site and newspaper notices, the notification of Planning Authorities and prescribed authorities.**
- Fulfilled the requirements set out in section 8(1)(c) of the Act and article 296 of the Regulations in relation to **potential significant effects on the environment of a Member State of the European Union or a state that is a party to the Transboundary Convention**, where applicable.

The applicant is referred to the document ‘Strategic Housing Development Pre-Application Consultation Guidance for Prospective Applicants’ with regard to section 247 consultations with the Planning Authority and section 6(7) Opinions of An Bord Pleanála.

#### **Note Regarding Section 7 of the Act of 2016**

The applicant may also make a request to An Bord Pleanála for an EIA / AA screening determination / scoping opinion under section 7 of the Act of 2016. Such requests are discretionary and are not a mandatory part of the SHD pre-application process. However, once the applicant has made a request under section 7, no SHD application can be lodged until An Bord Pleanála has issued the relevant determination / opinion.

#### **Material Contravention of the Development Plan**

Under section 3 of the Act of 2016, which provides a definition for SHD, it is clear that where a proposed development materially contravenes the relevant development plan or local area plan in relation to the zoning of land, then it does not constitute a strategic housing development and the provisions of the Act of 2016 do not apply. However, this exclusion from SHD provisions relates only in the relation to zoning and the Act provides that the Board may grant permission for a SHD proposal even where it would materially contravene the relevant development plan **other** than in relation to the zoning of land (section 5(6)).

In addition, where specific planning policy requirements of the relevant development plan differ from those set out in section 28 Guidelines, then the section 28 Guidelines shall, to the extent that they so differ, apply instead of the provisions of the development plan.

### **Newspaper Notice**

Section 8(1) of the Act of 2016 and article 294 of the Regulations of 2017 require the applicant to publish a notice in one or more newspapers circulating in the area of the application site prior to making a SHD application. The newspaper notice is to indicate the following:

- The location and a brief outline of the proposed development including the number of proposed houses or student accommodation units and, in the case of student accommodation units, the combined number of bedspaces and any other uses to which those units may be put.
- That permission is being sought from An Bord Pleanála for the proposed development.
- The times and places, including the offices of An Bord Pleanála and the offices of the relevant Planning Authority and the period of 5 weeks from the receipt by the Board of the application during which a copy of the application and any EIS or NIS may be inspected free of charge or purchased on payment of a specified fee.
- That the application contains a statement setting out how the proposal would be consistent with the objectives of the relevant development plan or local area plan and, where the proposed development materially contravenes the said plan other than in relation to the zoning of land, indicating why permission should, nonetheless, be granted having regard to a consideration specified in section 37(2)(b) of the Act of 2000.
- That in the case of an application that requires an EIS or NIS, that same has been prepared in respect of the proposed development.
- Where relevant, that the proposed development is likely to have significant effects on the environment of a Member State of the European Union or a state that is a party to the Transboundary Convention and inviting the making, during the relevant 5 week period, of submissions and observations to An Bord Pleanála relating to:

- (i) the implications of the proposed development, if carried out, for proper planning and sustainable development in the area or areas concerned, and
- (ii) the likely effects on the environment or the likely effects on a European site, as the case may be, of the proposed development, if carried out,
- The types of decision the Board may make, under section 9 of the Act of 2016 in relation to the application.
- That a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with sections 50 and 50A of the Act of 2000, and stating where practical information on the review mechanism can be found.

A sample newspaper notice is available at <http://www.pleanala.ie/>

### **Site Notice**

Article 292 of the Regulations of 2017 requires the applicant to erect a site notice not later than the day of publication of the newspaper notice. The site notice is to comply with the following requirements:

- The notice is to be inscribed or printed in indelible ink on a white background, affixed on rigid, durable material and secured against damage from bad weather and other causes. The notice shall be inscribed or printed in indelible ink on a **yellow** background where the subject SHD application is made within 6 months from the date of the making of a valid application under section 34 of the Act of 2000 or section 4 of the Act of 2016 in respect of the same land or structure.
- The notice is to be securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances, or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time.
- Where the land or structure to which an application relates does not adjoin a public road, a site notice shall be erected or fixed in a conspicuous

position on the land or structure so as to be easily visible and legible by persons outside the land or structure, and shall not be obscured or concealed at any time.

- Where An Bord Pleanála considers that the erection or fixing of a single site notice is not sufficient to comply with the above requirements, or does not adequately inform the public, it may require the applicant to erect or fix such further site notice or notices in such a manner and in such terms as it may specify and to submit such evidence as it may specify in relation to compliance with any such requirements.
- The site notice shall be maintained in position on the land or structure concerned for a period of at least 5 weeks from the date of receipt of the application for permission by An Bord Pleanála, shall be renewed or replaced if it is removed or becomes defaced or illegible within that period and shall be removed by the applicant following the notification of the Board's decision under section 9 of the Act of 2016, as required by article 293 of the Regulations of 2017.

A sample site notice is available at <http://www.pleanala.ie/>

### **Notification of Planning Authority**

The applicant is required to send 6 printed copies of the application and one copy of the application in a machine readable form on a digital device, along with any EIS or NIS, to the relevant Planning Authority, before making the SHD application to An Bord Pleanála, as required under section 8(1)(b)(i) of the Act of 2016 and article 297(6) of the Regulations of 2017.

### **Notification of Prescribed Authorities**

An Bord Pleanála is required under article 285(5)(a) of the Regulations of 2017 to inform the applicant at the conclusion of the Pre-Application Consultation process of the relevant prescribed authorities to be notified prior to the making of the SHD application.

The applicant is required under section 8(1)(b)(ii) of the Act of 2016 to send a copy of the application and of any EIS or NIS in both printed and electronic form to the

prescribed authorities, accompanied by a notice stating that submissions or observations may be made in writing to An Bord Pleanála during the relevant 5 week period in relation to:

- (i) the implications of that proposed development, if carried out, for proper planning and sustainable development in the area or areas concerned, and
- (ii) the likely effects on the environment or the likely effects on a European site, as the case may be, of that proposed development, if carried out.

The notice is to indicate the types of decision the Board may make in relation to the application, as required under article 295(3) of the Regulations of 2017.

### **Transboundary Consultation**

In the case that the proposed SHD is likely to have significant effects on the environment of a Member State of the European Union or a state that is a party to the Transboundary Convention, the applicant is required under section 8(1)(c) of the Act of 2016 and article 296 of the Regulations of 2017 to send one copy of the application and the EIS, along with electronic copies of same, to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may be made to An Bord Pleanála during the relevant 5 week period.

## **The SHD Application Process**

The SHD application process, which will take a maximum of 16 weeks from receipt of the application (except where an oral hearing is required), requires a number of key steps to be completed:

- **Lodgement of the SHD application** to An Bord Pleanála.
- **Submissions and observations by the public** to An Bord Pleanála.
- **Submissions by prescribed authorities** to An Bord Pleanála.
- **Submission of Planning Authority report** to An Bord Pleanála.
- **Decision** of An Bord Pleanála.

## **Lodgement of the SHD Application to An Bord Pleanála**

The SHD application should contain the information as provided for under section 8 of the Act of 2016 and article 297 (1), (2), (3), (4), (5) and (6) and article 298 of the Regulations of 2017. Such information includes:

- Completed SHD application form.
- Consent of the owner to make an application where the applicant is not the owner of the land concerned.
- Copies of the newspaper and site notices.
- Brief outline of the proposed development.
- Location map of sufficient size and containing details of features in the vicinity such as to permit the identification of the site to which the application relates, in accordance with the requirements of article 297(2)(c) of the Regulations of 2017.
- Evidence that Irish Water has confirmed that it is feasible to provide the appropriate service or services and that the relevant water network or networks have the capacity to service the development.
- Information on any proposed on-site wastewater treatment system and evidence as to the suitability of the site for the system proposed.
- The documents, particulars, plans, drawings and maps referred to article 297(4) of the Regulations of 2017.
- Details as to how the applicant intends to comply with the requirements of Part V, as set out in articles 297(2)(g) and (h) of the Regulations of 2017.
- Where the Board issued an Opinion under section 6(7) of the Act of 2016 that the documents enclosed with the request for Pre-Application Consultations required further consideration and amendment in order to constitute a reasonable basis for an application for permission, the application shall be accompanied by a statement of the proposals included in the application to address the issues set out in the notice.
- Statement setting out how the proposal will be consistent with the objectives of the relevant development plan or local area plan and, where the proposed development materially contravenes the relevant plan other than in relation to the zoning of land, indicating why permission should,

nonetheless, be granted having regard to a consideration specified in section 37(2)(b) of the Act of 2000.

- EIS and / or NIS where required.
- The appropriate fee.

Under article 285(5)(b) of the Regulations of 2017, An Bord Pleanála may notify the prospective applicant at the conclusion of the Pre-Application Consultation process that other / additional specified information must be submitted with any application for permission, including photographs, plans, maps, drawings or other material or particulars, including an assessment of the impact of the proposed development on transport in the area, including impact on roads, and / or a scale model of the proposed development including land and buildings in the vicinity, showing the elevations and perspective of the proposed development.

## **EIS / NIS**

An Bord Pleanála may refuse to deal with any SHD application where it considers that the application for permission, or the EIS or NIS if such is required, is inadequate or incomplete, having regard to relevant Regulations or any Pre-Application Consultation held under section 6 of the Act of 2016. Applicants will be notified of a refusal to deal with a SHD application within 2 weeks of the application being lodged. Where An Bord Pleanála refuses to deal with a SHD application, reasons and considerations will be provided.

## **Format of Information to be submitted:**

The applicant is to submit 2 printed copies of the SHD application to An Bord Pleanála, together with 3 copies of the application in a machine readable form on digital devices, as required under article 297(5) of the Regulations of 2017. In the case of a proposed SHD that requires an EIS or NIS, these shall be submitted with the SHD application.

## **Website**

The applicant is to make a copy of the SHD application available for inspection on the Internet at a web address set up for the purpose for the period commencing on the date of making the application and expiring 8 weeks after the applicant is notified of the Board decision, as required under article 301(3) of the Regulations of 2017.

## **Planning Authority Submission of Chief Executive Report to An Bord Pleanála**

The relevant Planning Authority is required to prepare and submit a report of its Chief Executive to An Bord Pleanála within 8 weeks of its receipt of a copy of the SHD application, as required under section 8(4) of the Act of 2016. The applicant is referred to the document 'Strategic Housing Development Applications Guidance for Planning Authorities' for information on the report of the Chief Executive of the Planning Authority.

## **Submissions and Observations from the Public to An Bord Pleanála**

Members of the public may make submissions or observations to An Bord Pleanála for up to 5 weeks from the date of receipt of the SHD application under section 8(1) of the Act of 2016. In the interests of providing greater certainty for developers in terms of timeframes within which SHD developments can be determined, there is no provision for applicants to respond to public submissions or observations.

## **Oral Hearing Requests**

An Bord Pleanála may hold an oral hearing in respect of a SHD application at its absolute discretion under section 18 of the Act of 2016. However, as the intention of the legislation is to fast-track SHD applications, the holding of oral hearings will be the exception. The legislation provides that An Bord Pleanála should have regard to the exceptional circumstances requiring the urgent delivery of housing and only hold a hearing where there is a compelling case for one. Where An Bord Pleanála holds an oral hearing of a SHD application, it shall make its decision within 24 weeks beginning on the day the planning application was lodged.

### **Decision**

The Board will make a decision on the SHD application on the basis of the proper planning and sustainable development of the area and the effects on the environment. The Board may: grant permission with or without conditions; grant permission subject to modifications; grant permission in part only, or refuse to grant permission for the proposed development under section 9(4) of the Act of 2016. The Board's decision will include the main reasons and considerations on which its decision is based.

Where the Board did not exercise its functions to refuse to deal with an application within 2 weeks of it being submitted, it can refuse to grant permission for a proposed SHD under section 9(5) of the Act of 2016 where it considers that development of the kind proposed would be premature by reference to the inadequacy or incompleteness of the EIS or NIS submitted with the application for permission, if such is required. There is no provision in the Act of 2016 for the Board to seek further information in respect of a SHD application.

When deciding to grant permission for a SHD, the Board may attach conditions in the normal manner, i.e. as specified in section 34(4) of the Act of 2000. In addition, the Board may attach a condition requiring the payment of development contributions of the same kind as the relevant planning authority could require under section 28 or 49 of the Act of 2000. The Planning Authority retains responsibility for matters with respect to compliance and enforcement.

An Bord Pleanála shall send a copy of the SHD decision to the applicant, to the relevant Planning Authority and to any person who made submissions or observations on the application. An Bord Pleanála is required under section 10 of the Act of 2016 to publish a newspaper notice informing the public of the decision.

For all queries in relation to this Guidance, you can:

Telephone us on:	(01) 858 8100 or LoCall: 1890 275 175
Email us at:	<a href="mailto:strategichousing@pleanala.ie">strategichousing@pleanala.ie</a>
Visit our website at:	<a href="http://www.pleanala.ie/shd/applications/index.htm">www.pleanala.ie/shd/applications/index.htm</a>
Write to us at:	Strategic Housing Unit An Bord Pleanála 64 Marlborough Street Dublin 1 D01 V902