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Your Ref:

24th November, 2020.

By email

Jason Milne, Esq.,
A&L Goodbody,
Solicitors,
DX 29 Dublin

Re: Proposed Waterfront South Central SHD

Your Client: Waterside Block 9 Developments Ltd

Dear Jason,

I refer to your request for advice as to whether the above proposed development falls within the definition of “*strategic housing development*” for the purposes of *Section 3* of the Planning and Development (Housing) and Residential Tenancies Act, 2006 (as amended) (“*the SHD Act*”).

The definition may be divided into two parts, the first of which relates to the three different categories of residential development in respect of which an application may be made pursuant to *Section 4* of the SHD Act. The first part of the definition provides as follows:

“*strategic housing development*” means—

(a) *the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,* ^[1]_[SEP]

(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,^[17]_[SEP]

(c) development that includes developments of the type referred to in paragraph (a) and of the type referred to in paragraph (b), 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),”.

As the proposed development in this case comprises, *inter alia*, the construction of 1,005 No. residential units, it falls within the scope of category (a) above.

The second part of the definition relates to the threshold floor space for non-residential uses forming part of the application. The second part is set out below:

“each of which may include other uses on the land, the zoning of which facilitates such use, but only if—

(i) the cumulative gross floor space of the houses, student accommodation units, shared accommodation units or any combination thereof comprises not less than 85 per cent, or such other percentage as may be prescribed, of the gross floor space of the proposed development or the number of houses or proposed bed spaces within student accommodation or shared accommodation to which the proposed alteration of a planning permission so granted relates, and

(ii) the other uses cumulatively do not exceed—

(I) 15 square metres gross floor space for each house or 7.5 square metres gross floor space for each bed space in student accommodation or shared accommodation in the proposed development or to which the proposed alteration of a planning permission so granted relates, **subject to a maximum of 4,500 square metres gross floor space for such other uses in any development,** or

(II) such other area as may be prescribed, by reference to the number of houses or bed spaces in student accommodation or shared accommodation within the proposed development or to

*which the proposed alteration of a planning permission so granted relates, which other area shall be subject to such other maximum area in the development as may be prescribed;”*¹

It is clear from the second part of the definition of “*strategic housing development*” that the “*other uses on the land*” must not exceed 15 sq. m. gross floor area for each “house” or residential unit, subject to a maximum of 4,500 square metres gross floor space for such other uses in any development. In that context -

‘gross floor space’ means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building;”

I am instructed that the “other uses” comprise 4,307 square metres gross floor space and, therefore do not exceed the maximum permissible 4500 m² gross floor space. I understand that all of the property to be provided is ancillary to the residential part of the development. In the circumstances, I can confirm in my opinion that the proposed development is “strategic housing development” for the purposes of section 3 of the SHD Act.

Yours sincerely,

EAMON GALLIGAN S.C.

¹ Emphasis added.