



Submission on
Updated Draft Guidelines for Planning Authorities
on Apartment Development

25 January 2018

1. Introduction

Threshold is Ireland's foremost charity in the protection of tenants' housing rights. Our vision is an Ireland where everyone has access to affordable, secure, suitable and good quality housing. Threshold works, on a daily basis, with people experiencing housing problems with regional advice centres in Dublin, Cork and Galway. Our primary objective is to prevent homelessness and with 73,526 calls in 2017 we are in a unique position to analyse existing problems and identify necessary policy change to improve the operation of the housing system in Ireland.

Renting is now the reality, whether by choice or necessity, for many households in Ireland. At least one in five homes in Ireland is privately rented, yet this sector is also the most expensive and least secure form of housing in Ireland. Increasingly our client base is renting apartments. This is reflected in Census 2016 which shows that between 2002 and 2016, the number of occupied apartments increased by 85%, nationally. They now comprise 12% of all occupied households in Ireland and 35% of occupied households in Dublin City.¹

What we do today will shape society and we cannot afford a race to the bottom in quality of apartment developments. Multi-Unit Developments (MUDs) will form the fabric of our housing landscape in the future and affordability, sustainability and the quality of rental homes must be at the heart of all policy considerations.

¹ Census of Population 2016 - Profile 1 -Housing in Ireland. Available at <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii>

Threshold strongly supports all initiatives to drive supply of accommodation and we welcome the Updated Draft Guidelines for Planning Authorities on Apartment Development (“Updated Draft Guidelines”). We are particularly interested in the specific Built to Rent (BTR) model. If done correctly it could add new supply but also free up some existing supply. We also support the focus on housing for key workers and the possibility of large multinational companies building directly for their staff.

However we have a number of concerns. The introduction of social, affordable and cost rental schemes are crucial parts of a co-ordinated approach to addressing affordability issues, in tandem with long term rent certainty measures, increased security of tenure and good quality standards. Builders and developers naturally seek to maximise profits. Their interests are robustly conveyed to policy makers. Our concern is that in policy discussions with the various stakeholders, there is a risk of insufficient focus on, and commitment to, sustainable apartment living for Irish households and ensuring building standards and fire safety rules are adhered to. Encouraging a proliferation of high rise ‘shoe-boxes’ or professional ‘hubs’ with shared facilities and the consequent reduction in standards does not seem like a desirable vision for our future. We must avoid sleepwalking into a repeat of “Strumpet City” at all cost.

2. Real Risk of “slummification”

Threshold has a long history of advocating on behalf of those living in apartment developments. This year marks the 40th anniversary of Threshold's public advocacy on living standards for apartment dwellers. We were heavily active in debate in the 1980s and 1990s because of the poor quality apartments built in Dublin City. This trend continued at the height of the Celtic Tiger. Priory Hall and other apartment developments have been affected by various defects, including fire safety risks, pyrite and mica. In response to a fire which broke out in an apartment block at the same time, Threshold referred to a new "slummification" in Dublin and the "tragic and scandalous" irony that after a period of unprecedented prosperity this was happening in the same city whose historic slums had been notorious.²

Given this grim record, there should not be a drop in standards in apartment building. There are other ways to increase affordable supply most notably by the State resuming its responsibility to construct social and affordable housing which is discussed below. It is our fear that by weakening standards, there will be no way to prevent the accommodation envisioned in the Draft Updated Guidelines, intended for the higher end of the market³, from quickly deteriorating and becoming the substandard homes for lower income households, the working poor and those in receipt of housing supports. We must avoid this potentially new form of residualisation. There is also the danger that the standards, as currently drafted, will become the weak link in the chain

² <https://www.irishtimes.com/opinion/ireland-s-slum-landlords-have-little-to-fear-today-as-a-century-ago1.3286354>

³ e.g. High earning employees of multinational companies and young professionals.

which allows unscrupulous developers to build cheap, cramped accommodation for the very poorest.

We welcome the Oireachtas Joint Committee on Housing's recommendations in the "Safe as Houses" report to establish a Building Standards and Consumer Protection Agency and ensure complete independence of the building certification system. As we have learned from the rental sector, lack of regulation can lead to loss of life and proper standards will only be achieved through the elimination of self-certifying and mandatory fire safety inspection.⁴

We are very concerned that the Draft Updated Guidelines do not refer to the Housing (Standards for Rented Houses) Regulations 2017. In the current market with limited affordability, the proposed increase in one-bed and studio accommodation presents a serious risk for overcrowding which is undesirable in itself not to mention a major fire risk. We may see an increase in two or three people sharing one bed apartments and studios due to economic necessity.

The Oireachtas has endorsed Threshold's proposals for a NCT type certification system for private rented housing and we are urgently calling for it to be introduced. Under this certification scheme landlords would be obliged to prove compliance with minimum standards and fire safety before they could rent their properties. We would

⁴ <https://www.irishtimes.com/opinion/having-the-political-will-to-prevent-another-priory-hall-1.3365656>

also like to see the introduction of minimum energy efficiency standards as part of the wider improvements to the standards in private rented accommodation.⁵

Recommendations

- Building standards and fire safety standards must not be diluted to cut the cost of construction.
- Introduce a NCT for Housing.
- Introduce a legal definition of overcrowding.
- Introduce minimum energy efficiency standards for the private rented sector.

3. Appropriate Housing

There is a risk that the additional stock envisioned will not be affordable or indeed appropriate for many renters. A comprehensive housing need and demand assessment (HNDA) should be carried out. This should take a holistic view of demographics, the changing housing landscape, affordability, sustainability and quality of life.

It is critical that additional apartments are affordable for tenants. Currently under the Residential Tenancies Act, new properties do not fall under the Rent Pressure Zones rules and rents can be set at rent levels that are at the top of the market. There is a risk that additional stock will not be affordable for many renters. This concern also

⁵ Since 2009 landlords are required to provide a Building Energy Rating (BER) when renting out a property. It is estimated that more than 55 per cent of private rented dwellings have poor energy efficiency, with a Building Energy Rating (BER) between D and G.

applies to Build to Rent (BTR). Furthermore, there is a risk that large apartment developments could skew the market rent in a particular area.

A significant cohort of the population will never access home ownership. Renting is the reality, and will continue to be the reality, for an increasing share of Irish households long into the future. Census 2016 highlights that almost a third of primary school children are living in rented accommodation.⁶ However many of the measures in terms of reducing space etc. will negatively affect households with children. Many households are not in position to move accommodation as their family grows. We are currently seeing cases of landlords evicting families when they have a child. Landlords rely on section 34 termination ground in the Residential Tenancies Act that the accommodation is no longer suitable for the household.

There is a need to address the housing needs of single people. Figures released by the Society of Chartered Surveyors Ireland (SCSI) in October 2017 on 'Apartment Affordability' estimated that a couple needs to have a combined salary of €87,000 to afford a suburban apartment at the lower end of the scale.⁷ This is completely out of the reach of most single people. Policy makers should take this into account and offer a better long term accommodation alternative to single people than small onebed and studio accommodation with no possibility to have guests or visitors.

⁶ Census of Population 2016 - Profile 1 -Housing in Ireland. Available at <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii>

⁷ Society of Chartered Surveyors of Ireland, *The Real Costs of New Apartment Delivery ANALYSIS OF AFFORDABILITY AND VIABILITY*, October 2017 https://www.scsi.ie/documents/get_job?id=1338&field=file at.p.32.

This is particular apt in the case of single fathers who need larger rental space. In *McCormack -v- Minister for Social Protection & ors* the High Court found that the local authority must reconsider a decision to grant only single person's rate of the rent supplement payment to a separated father of four. The court found that the deciding officer applied the wrong legal test by assessing only the father's accommodation needs without having any regard to "the accommodation needs of the children when they are visiting their father" and the "intrinsic interconnectedness" of those needs with those of their father."⁸

We are an ageing society and increasing numbers of older people will live in smaller units. This will present challenges in terms of the increasing need for separate rooms for carers for example. While there is mention of the need for access to public transport there is no mention of for example the need for access to local shops and restaurants etc. within larger blocks. In many European countries, retail units are frequently found on the ground floor of apartment blocks which can help foster a sense of community.

Threshold completely rejects the concept of "shared living and believe it will lead to "21st century bedsits". While we understand the intention there is no way to prevent these guidelines, as currently drafted, being exploited by unscrupulous developers to build cheap, cramped accommodation for the very poorest. We would also have very serious concerns that such accommodation, intended solely for those in employment,

⁸ [2014] IEHC 489.

would fall foul of the Equal Status Acts and would urge the government to consult with the Irish Human Rights and Equality Commission on this matter.

Recommendations

- Undertake a comprehensive housing need and demand assessment to ensure appropriate housing.
- Reconsider the introduction of “shared accommodation.”

4. State Responsibility for Affordable Housing Development and Land Management

We are concerned that the Updated Draft Guidelines are once again an example of the government shirking its responsibility to build social and affordable housing on a large scale. The state’s continued outsourcing and overreliance on the private sector to produce affordable housing is negligent. Housing is not, and should not, be treated as a commodity. Relying solely on Build To Rent (BTR) developments which are privately rented will not achieve a social mix or affordable rental accommodation.

Calling for 2018 to be the Year of the Right to Housing, UN Special Rapporteur Leilani Farha expressed the need for a:

“Shift in the way that we interact with housing, from treating it as a commodity and a luxury for the rich...It calls on everyone to recognize the

absolute centrality of home to individual autonomy, dignity, equality and life.”⁹

This is because the standard supply and demand theory – produce more and the price will come down – does not apply to property and demand. The Updated Draft Guidelines are clearly focused on cutting costs, and in all likelihood corners, for developers. This is starkly demonstrated at paragraph 1.15, which reads as follows:

“On the other hand, the economics of residential multi-unit and apartment construction remain challenging. The planning process, along with other sources of regulation and related input cost, must play its full part in ensuring that, while appropriate standards of accommodation are set from a long-term planning and sustainable development perspective, that such standards are compatible with economically viable housing supply in our major urban areas, based on people’s incomes and what they can afford in terms of rents and/or mortgages.”¹⁰

Given recent history it would be wholly naïve to assume that cost savings for developers as a result of easing room sizes restrictions, along with other reductions of standards, will be passed on to tenants in the form of reduced rents. It is critical that additional apartments are affordable for tenants. We must learn from the mistakes of the past and ensure that measures to incentivise private building,

⁹ <https://www.theguardian.com/housing-network/2018/jan/02/2018-global-housing-crisis-us-canadahomelessness>

¹⁰ http://www.housing.gov.ie/sites/default/files/publications/files/draft_update_of_planning_guidelines_on_apartments_2018.pdf

ultimately increase supply rather than further stimulating demand. Increased rent inflation and lowering minimum standards should not be encouraged in an already dysfunctional private rented sector (PRS).

There is an urgent need to transform how government, at all levels, interacts with the provision of housing and land management in this country. Current economic policies and housing systems create and sustain inequality and exclusion in Irish society. Last year only 6,268 houses were built, brought back into use or acquired by the State. Housing supports such as the Housing Assistance Payment (HAP), Rental Accommodation Scheme (RAS) and long term leasing which support tenancies in the private rental sector, are now used as alternatives to traditional social housing. 76% of social housing need, accounting for 19,624 households, was met by the State by subsidising private landlords in 2017. By 2021, the needs of over 87,000 households will be met through supporting households in to unsecure tenancies in the private rental sector (HAP and RAS).¹¹ These are insecure and short-term tenancies subject to often unsustainable and unpredictable rent increases; a far cry from the 'homes for life' provided by the state.

Threshold dealt with 2,446 cases where a tenancy was being terminated by a landlord in 2017. The top 3 for reasons for terminations were: sale of property by landlord, which made up 38% of cases. This was followed by landlord/family member moving in (17%) and renovation (12 %). Quite often upon investigation it is revealed that

¹¹ https://www.housing.gov.ie/sites/default/files/publications/files/ri_report_housing_completions_2017.pdf

terminations are RPZ avoidance measures i.e. sitting tenants are evicted and new tenants are paying above the 4% rent cap, with no way of proving the landlord is breaking the law. The success of rent certainty and thus affordability is undermined by the lack of security of tenure. That is why we have been calling for indefinite tenancies and a Rent Transparency Register to empower tenants with the information they need to assert their rights.

Threshold has long advocated that the government needs to step up and act as a developer, providing large scale social, affordable and cost rental housing schemes. Local authorities have the capacity to zone large areas of land for themselves and could employ design teams and contractors to develop such schemes. A new national housing agency, with local authorities pooling resources and expertise at a regional level, could be established. This would mean that local authorities can control the process and provide affordable homes, including rentals, at a fraction the cost of privately provided housing. Another alternative is the co-operative model such as the Ó Cualann Cohousing Alliance in Ballymun. Dublin City Council sold serviced sites cheaply to the co-operative, which in turn delivered three-bedroom houses costing between €160,000 and €165,000 - more than 30 per cent below market value. In contrast the latest scheme, Rebuilding Ireland Home Loan, which relies on the private sector, has a maximum market value threshold of €320,000 in the Greater Dublin Area and Cork and €250,000 in the rest of the country.¹²

¹² <http://rebuildingirelandhomeloan.ie/>

Land hoarding and cost of land is a substantial factor in this housing crisis and the Government needs to take a stronger role in land management in the state. The new national agency should be responsible for land management, releasing land when demand necessitates and acquiring lands in economic downturns. Ó Cualann is a good example of how local authority land can be released into the market and targeted towards affordable housing.

Recommendation

- The state must urgently deliver large scale social, affordable and cost rental housing schemes and actively engage in land management across the country.
- Introduce indefinite tenancies.
- Rollout out Rent Pressure Zones nationally and introduce a Rent Transparency Register.

5. Cost Rental

If done properly a cost rental sector of sufficient size means the cost of providing housing supports such as HAP would be more predictable and less subject to rapid cost increases. The Expert Group on Cost Rental, established by the Rental Strategy, was due to report in Q4 2017. The recent announcement by the Minister for Housing was vague on detail and contained no real targets on the cost rental model. While there was mention of meetings with the European Investment Bank pilots in

Dublin and Cork, more progress is required at this stage. A definitive Cost Rent Model needs to be selected and urgently implemented by the government in order to provide more affordable homes for renters. The government is particularly keen to ensure that sufficient subsidises are put in place at the outset of cost rental schemes to moderate high initial sunk costs. This is extremely important as rents will increase for some social housing tenants, who in many cases pay about 15% of their disposable income on differential rents at the moment.

Recommendation

- Urgently create and implement a definitive Cost Rent Model.

6. Built to Rent

While we welcome the chapter on BTR accommodation we need to be cognisant of existing legislation for the rental sector and also possible amendments or consolidations that may be required in order to protect tenants' rights.

Firstly if the development of the BTR market is to be the successful catalyst for longer term renting we must ensure that accommodation is affordable, secure and attractive to renters. If the aim is to move towards European norms of 40-60% apartments stock then we must also move closer to the European norm of stronger security of tenure.

There is significant emphasis on communal facilities in the document which is positive. However, as well as ensuring that such facilities are included in developments, it is important those provisions are put in place to ensure they are run and maintained correctly.

It is worrying that there is no reference in the Updated Draft Guidelines to the MultiUnit Developments Act 2011, which requires that an owners' management company is set up and that common areas of a development are transferred to it, before the developer sells any units. The responsibilities of the developer and the owners' management company, in relation to minimum standards compliance once occupied, scheduling of cyclical repairs, and projected response time to repairs, should be clearly set out before planning permission is granted.

We are concerned that improper provision is being made for long term funding of capital expenditure in multi-unit developments. The 2011 Act recommends that members contributions to the sinking fund should be 200 euros per unit per year, however the members of the owners association may set this figure at whatever they feel is appropriate. The presence of a sinking fund account is mandatory but the contributions are not.

At present tenants have little or no control over the management of their apartment blocks. Tenants should be represented on owners' management companies and have voting rights. Tenants should be provided with a pre tenancy programme where the owners' management company provides information and advice to their tenants.

Recommendations

- Ensure compliance with the Multi-Unit Developments Act 2011.
- Ensure appropriate sinking funds are put in place by owners' management companies.
- Tenants should be represented on owners' management companies and have voting rights.

