

Sligo Borough Council

Policy on Taking in Charge of Residential Development

JUNE 2008

Policy for the Taking in Charge of Residential Developments

Contents:

1. Taking in Charge Policy: Overview

- 1.1 Legislative framework
- 1.2 Policy framework

2. Taking in Charge

- 2.1 Facilities to be taken in charge
- 2.2 Maintenance services

3. Measures to ensure satisfactory completion of residential developments

- 3.1 General
- 3.2 Adoption of standards for external works
- 3.3 Application of standards
- 3.4 Early identification of areas to be taken in charge
- 3.5 Appropriate planning conditions
- 3.6 Inspection of construction
- 3.7 Enforcement action
- 3.8 New powers available to planning authorities to refuse planning permission

4. Responding to a request for Taking in Charge

- 4.1 Adoption of a procedure/protocol

5. Planning conditions relating to management arrangements

- 5.1 Traditional housing estates
- 5.2 Multi-unit structures
- 5.3 Other instances where it may be appropriate to condition management arrangements

6. Dealing with requests relating to older estates

- 6.1 Assessing/categorising requests
- 6.2 Estates satisfactorily completed
- 6.3 Priority list for estates not completed satisfactorily
- 6.4 Action in relation to uncompleted estates
- 6.5 Remedial works by the planning authority

Appendices:

- 1: Procedure for inspecting the construction of Residential Developments
- 2: Protocol / procedure for Taking in charge residential developments

1. Taking in Charge Policy: Overview

1.1 Legislative framework

Section 180 of the Planning and Development Act 2000, requires Planning Authorities to commence taking in charge procedures in relation to residential developments, finished or unfinished, where certain conditions have been met.

Section 34(4) (l) of the Act provides the legal basis for a planning authority to attach to a planning permission "conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management)".

1.2 Policy framework

The Department of the Environment, Heritage & Local Government February 2007 statement on Housing Policy "Delivering Homes, Sustaining Communities" sets out a number of actions focused on building sustainable communities. These include building on the current suite of best practice guidance on urban planning, and developing new comprehensive planning guidelines on interrelated housing and planning matters to address emerging needs.

The new guidelines include:

- a) Guidelines on Quality Housing for Sustainable Communities (March 2007);
- b) Guidelines for Planning Authorities on Design Standards for New Apartments (September 2007);
- c) Updated Residential Density Guidelines (Draft Guidelines on Sustainable Residential Development in Urban Areas currently available for public consultation); and
- d) Guidance in relation to a framework policy for the taking in charge of residential developments by Planning Authorities (February 2008).

2. Taking in Charge

2.1 Facilities to be taken in charge

It is the policy of the Council to take in charge residential developments, where certain conditions have been met. It is also the policy of the Council not to take in charge holiday home developments or residential developments used entirely for short-term letting or apartment type developments as these are maintained by management companies. The Council will however require that such developments are finished to the same standard as residential developments.

Taking in charge of a particular development involves Sligo Borough Council taking control of the following services and public areas.

- a) • Public roads and footpaths;
- b) • Unallocated surface parking areas;
- c) • Public lighting;
- d) • Fire services including fire hydrants;
- e) • Public open spaces;
- f) • Playgrounds, where these are required by condition of a planning permission as facilities for public use

and

Sligo County Council taking control of the following services

- Public water supply, foul and storm water drainage. *
- Wastewater treatment plants and associated buffer zones;
- Potable water treatment plants and any associated protection zones;

* It is the policy of the Council to have a closed circuit TV survey carried out on all main runs of foul and storm sewers, to ensure satisfactory standards of construction. The survey will normally be carried out by a contractor nominated by the Council.

2.2 Maintenance services

The maintenance services that will be provided by Sligo Local Authorities following the completion of the taking in charge process will include the following:

Sligo Borough Council

- Maintenance of all roads and footpaths, including unallocated street car parking;
- Road sweeping and cleaning services of the principal public routes within the residential development;
- Upkeep and maintenance of all public lighting installations including non-standard light fittings;
- Maintenance of public open spaces (that is, spaces to which the general public have access), not including grass cutting or maintenance of grass verges, incidental ornamental/landscaped areas, shrubberies or playgrounds, unless such playgrounds are required, as a facility which will be available to the general public, by the planning authority by way of planning condition.
- Upkeep and maintenance of all surfaces, fixed elements and rigid play equipment in play lots and playgrounds in cases where the playground or play lot was required by condition of a planning permission.

Sligo County Council.

- Maintenance of water mains and drainage services;

Service levels will be subject to funding.

3. Measures to ensure satisfactory completion of residential developments

3.1 General

Subject to resources all steps will be taken by the planning authority to ensure that developers complete the residential development to taking in charge standard (see sections 3.2 – 3.8). This will involve a comprehensive and integrated approach to dealing with the planning process for residential development, to include a number of key elements as set out in this section.

3.2 Adoption of standards for external works

It is essential that public roads, footpaths, services and open spaces in residential developments are finished by the developer to a standard acceptable to the Planning Authority for taking in charge and long term maintenance.

Construction and design standards

In general, subject to addendum below, developments are to be carried out in accordance with the Department of the Environment, "Recommendations for Site Development Works for Housing Areas (1998)". This document is currently being updated and when introduced developments are to be carried out in accordance with the Revised Recommendations.

Addendum:

The construction standards set out in the 1998 publication are still generally applicable (although the section on public lighting requires updating).

The design principles and standards in the 1998 publication require significant revision. The residential road design standards in the 1998 publication relate to the more traditional housing layouts and are not flexible enough to accommodate the higher densities required for the delivery of more compact and sustainable communities. Layouts which seek to ensure very low traffic speeds and greater priority for pedestrians and cyclists in residential areas will be encouraged, which will mean the application of standards other than those contained in the publication in particular circumstances.

The Planning Authority will also have regard to the following:

- o *The Department's commitment to build sustainable communities necessitates the incorporation of urban design principles and more contemporary standards in the design and layout of roads and streets, particularly in higher density schemes. The Department's Guidelines on Sustainable Residential Development in Urban Areas, currently available as a consultation draft, make reference to such contemporary standards. The new guidelines will:*
 - *Facilitate the development of sustainable communities through effective planning and the provision of necessary supporting services and amenities;*
 - *Help achieve the most efficient use of urban land through housing densities that are appropriate to the location involved and availability of supporting services and infrastructure, particularly transport; and*
 - *Set high standards in terms of space and facilities to meet needs into the future.*

The draft guidelines are accompanied by a design manual, "Sustainable Residential Design, a best practice guide", which contains many examples of good practice in the design and layout of contemporary residential areas in Ireland and will be a valuable reference document.

- o *Traffic Management Guidelines (2003) jointly issued by the Department of the Environment, Heritage and Local Government, the Department of Transport and the Dublin Transportation Office, which gives advice on the design and layout of roads in the new residential development.*
- o *Emerging best practice*

3.3 Application of standards

All residential developments granted planning permission must at a minimum comply with the standards outlined under Section 3.2.

3.4 Early identification of the areas to be taken in charge

The Council will address the taking in charge issue at pre-application consultation stage, when the type of residential development and the standards proposed will be discussed. Applications for residential development shall delineate the area that would, in accordance with this document, potentially fall to be taken in charge on the site layout map. It is envisaged that, generally, certain core services will always be taken in charge (see section 2.1). The Council will ensure that the design of the approved development will facilitate this by separating the areas/facilities that will be taken in charge from those that will not. Sewers and water mains are not to be located under landscaping or allocated parking area that will not be taken in charge.

3.5 Appropriate planning conditions

Section 34 of the Planning and Development Act 2000 provides the legislative basis for attaching conditions to planning permissions. Appropriate conditions will be attached to grants of permission for residential development in relation to:

- The giving of adequate financial security (S.34(4)(g)) and the length of time the security must remain in place;
- The facilitation of inspections by the planning authority;
- The phasing of the development, if appropriate (S.34(4)(h));
- The completion of the development in accordance with specified standards;
- The evidence to be produced by the developer to demonstrate that the residential development has been completed to the appropriate standards and the time period for the production of such evidence;
- The maintenance by the developer of the residential development until taking in charge; and
- The vesting in the authority by the developer, upon taking in charge, of the areas to be taken in charge.

Financial Security / Bond

The security / Bond will be released when the residential development has been completed to the satisfaction of the Planning Authority and when it is taken in charge.

The Planning Authority will determine both the level of the security and the type of security (e.g. the lodgement of a bond from a financial institution - e.g. bank, insurance company, building society - a cash lodgement or a letter of guarantee from the Construction Industry Federation) that will be required for each residential development. The amount of the security, and the terms on which it is required to be given, will enable the planning authority, without cost to itself, to complete the necessary services (including roads, footpaths, water mains, sewers, lighting and

open space) to a satisfactory standard in the event of default by the developer. The condition will require that the lodgement of the security be coupled with an agreement that would empower the planning authority to realise the amount of the security at an appropriate time and apply it to meet the cost of completing the specified works.

In general, either an open-ended Bond or a Bond with an expiry date is acceptable to the Planning Authority. Where the latter is proposed, a 3 month notification of expiry of Bond is required. The period specified in the Bond is to be extended, where required by the Planning Authority.

The bond obtained will be applied to carry out any outstanding work where needed to ensure that the development is completed to a satisfactory standard.

Conditions in relation to phasing of the development

The Planning Authority will consider whether it is appropriate to attach a condition regarding the phasing of the development in order to ensure that residents do not have to live in uncompleted residential developments for lengthy periods. The Development Management Guidelines for planning authorities (June 2007) state that:

- A phasing condition could include requirements relating to the completion of roads, public lighting, open spaces, etc. which are necessary for, or ancillary to, the completed units in each phase.
- Such an arrangement would permit the security for satisfactory completion to be related to a particular phase or phases of the development and thus enable completion of sections of the scheme to be advanced while, at the same time, facilitating the developer by obviating the need for a very large security appropriate to the entire development.

In devising any phasing arrangement the planning authority will ensure that main sewers, surface water drainage systems, main distributor roads, etc., are completed at an appropriate stage so that the first and each subsequent phase will, on completion, be fully serviced and independent in the event of other phases not proceeding.

3.6 Inspection of construction

The Planning Authority will endeavour to carry out regular inspections, during the course of the construction of the development to ensure satisfactory completion in accordance with the permission. Procedures will be put in place for inspecting the construction of residential developments – See Appendix 1.

3.7 Enforcement action

Enforcement protocols will be put in place detailing appropriate enforcement procedures that will be pursued against developers who do not satisfactorily complete residential developments. These protocols will also specify time frames in relation to enforcement action.

Inspection of the development will take place as soon as possible after the expiration of the permission or notification by the developer that the development is complete. All available legal remedies under the 2000 Act, as amended, will be used by the Planning Authority to enable outstanding matters to be resolved without delay.

3.8 New powers available to planning authorities to refuse planning permission

Appropriate use will be made of the amended section 35 of the Planning and Development Act 2000. This provision gives a new power to planning authorities, to refuse planning permission, without recourse to the High Court, to a developer who has substantially failed to comply with a

previous planning permission. It reversed the burden of proof applying under the previous provision, under which the planning authority had to apply to the High Court for consent to refuse permission in such circumstances.

4. Responding to a request for Taking in Charge

4.1 Adoption of a procedure/protocol

A procedure or protocol for the actual taking in charge of a residential development in response to a request from either a developer or a majority of the residents (as defined under Section 180 (i) of the Planning & Development Act 2000), will be introduced as part of this policy, see appendix 2. A designated officer will be appointed by the Planning Authority as a coordinator/liaison person.

5. Planning conditions relating to management arrangements

5.1 Traditional housing estates

There will be no requirement to set up a management company for traditional housing estates (that is estates of houses with individual private gardens) except in the most exceptional circumstances, e.g. to maintain a specific facility in that estate which is for residents use only (such as a private playground) or in the case of holiday homes.

5.2 Multi-unit structures

Management companies are normally necessary for multi-unit structures (i.e. apartments and/or apartments and duplex houses) of four dwellings or more. In such developments management companies are necessary to maintain:

- Shared exteriors of buildings: e.g. external walls and roofs
- Shared internal areas: e.g. stairways, lifts and lobbies.

In the case of such structures a condition in relation to Management Company / other management arrangements will be imposed on the relevant planning permission.

5.3 Other instances where it may be appropriate to condition management arrangements

The Planning Authority will consider attaching a planning condition relating to the maintenance or management of a development in the following circumstances:

(a) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain external private shared facilities that are exclusive to the development (e.g. boiler houses, switch rooms, bin storage areas communal private gardens/private open spaces, private playgrounds), where a management company is considered essential having regard to the nature and scale of such facilities.

(b) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain facilities which though not necessarily inaccessible to the general public, are not required to be taken in charge, in accordance with this document, e.g. facilities such as highly landscaped open spaces, allocated car park spaces - see section 2.1.

In the case of (a) and (b) above the Planning Authority will consider whether a management company would be necessary having regard to the extent of the facilities to be maintained and the extent of the maintenance that will be required: other management arrangements may be more appropriate including residents associations and voluntary co-operation.

(c) To maintain holiday home developments, that is, residential developments where planning permission was applied for, or granted, on the basis that the residential units are holiday homes, or residential developments used entirely for short-term letting.

6 Dealing with requests relating to older estates

6.1 Assessing/categorising requests

All requests for taking in charge estates currently on hand will be promptly assessed and dealt with in accordance with the procedures set out below.

6.2 Estates satisfactorily completed

Where an estate is completed in accordance with the terms of the planning permission, the process of taking in charge will commence, without delay on foot of a request to do so. A time-scale of 6 months will apply from the date of the request.

6.3 Priority list for estates not completed satisfactorily

A priority list will be drawn up of requests from residents for the taking in charge of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished. New requests for the taking in charge of unfinished estates will be added to the priority list, as appropriate.

All unfinished estates which are the subject of a request to be taken in charge will be kept on this list, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the bond so that these estates remain on the priority list for remedial works by the planning authority in the event that enforcement action or calling in the bond fails.

6.4 Action in relation to uncompleted estates

All appropriate action in terms of getting the estate completed other than at the expense of the planning authority will be pursued as quickly as possible. The process of taking it in charge will commence when the estate is brought to a satisfactory standard.

6.5 Remedial works by the planning authority

In accordance with section 180(2) of the Planning and Development Act 2000, the Planning Authority shall commence taking in charge procedures in respect of an unfinished estate where the majority of residents so request. In addition, where enforcement action or calling in the bond is not possible, or has been unsuccessful, the planning authority will over a period complete such developments to taking in charge standard, subject to sufficient funding being provided from planning authority resources to enable this to be done.

Appendix 1

PROCEDURE FOR INSPECTING THE CONSTRUCTION OF RESIDENTIAL DEVELOPMENTS

- (i) On receipt of the Commencement Notice a Taking in Charge file will be opened for each residential development;
- (ii) The commencement notice and all requests for inspections and other correspondence arising from the process will be formally acknowledged;
- (iii) A calendar of inspections, tied to the projected completion of the development, including such phasing as may be conditioned in the Grant of Permission or agreed by the planning authority, will be set out at the outset;
- (iv) The record of such inspections and/or testing will be held on the Taking in Charge file;
- (v) Failure to adhere to programmes, to notify the authority in relation to inspections and testing or other such breaches will result in Enforcement action being taken by the planning authority;
- (vi) The record of such Final Inspections and/or Testing will be kept on file and the file will be retained by the authority for future reference.

APPENDIX 2

PROCEDURE / PROTOCOL FOR TAKING IN CHARGE OF A RESIDENTIAL DEVELOPMENT

A) Application

1. Application form to be completed and submitted by developer.
2. Appropriate fee to be paid (€250 per house).
3. The following documentation to be submitted
 - a) Evidence that all necessary way leaves are reserved forever in the transfer documentation to house purchasers.
 - b) 3 copies of site location map (scale 1:2500) with the residential development (site) clearly outlined in red
 - c) 3 copies of as-constructed drawings for the residential development (site) to a scale of 1:500 and an electronic copy on a CD showing:
 - The residential development boundary depicted in red.
 - The layout and levels of roads, footpaths and sewers (foul and surface water).
 - The layout and diameters of the water mains with valve positions marked (including hydrants). Where more than two valves are provided at a water main junction, a line drawing showing the layout of valves at the junction shall be provided.
 - The gradient of all sewer section, invert and cover levels to a recognised national datum
 - Marker plates for all hydrants, sluice valves, air valves and scour valves.
 - The position of road gullies and their connection points to the main surface water network.
 - The position of services or service ducts crossing carriageways clearly identified by dimensioning from some clearly visible surface feature, eg road gully or manhole and also details of the services for electrical, telephone and television or other services underground in the residential development.
 - The position of public lights and micro pillars for lighting and services.
 - Open space (to be coloured green).
 - Clear identification of surface water discharge points
 - d) A certificate that the development has been carried out in accordance with the "Recommendations for Site Development Works for Housing Areas" (Department of the Environment & Local Government, 1998), subject to such amendments as have been approved by Sligo County Council. This certificate shall be signed by a suitably qualified person with professional indemnity insurance who is not a beneficiary of the development (apart from fees).

- e) Test results for Water mains in accordance with “Recommendations for Site Development Works for Housing Areas” (Department of the Environment & Local Government, 1998. All the above tests shall be certified to the above requirements.
- f) A Certificate from a competent Electrical Contractor (who is a registered member of RECI) that the Public Lighting complies with BS 5489 and is per specification in Section 5, ‘Public Lighting’ in ‘Recommendations for Site Development Works for Housing Areas’ (Department of the Environment, Local Government & Heritage 1998)
- g) Letter from Management Company or residents’ group that the open space will be maintained by them.
- h) Test results duly certified showing the output in litres per minute from all the fire hydrants in the residential development

B) Process following application

- 1) Within 2 weeks of receipt of the request for taking in charge, the Planning Authority will acknowledge receipt of the request and the documentation submitted and will arrange to have a closed circuit TV survey on all main runs of foul and storm sewers carried out by an agent on its behalf.
- 2) Within 6 weeks of receipt of the closed circuit TV survey, the planning authority will in conjunction with Sligo County Council and the developer, carry out a comprehensive inspection of the development or phase of development; and notify the developer in writing of all outstanding issues remaining to be addressed in relation to the satisfactory completion of the development.
- 3) The developer will within 4 weeks of receipt of details of outstanding issues from the planning authority, arrange for completion of the said works, and notify the authority when works are completed. If works cannot be carried out within that period the developer must notify the authority as to when the works will be completed, and agree a definite timeframe for the completion of same.
- 4) The authority will, within 4 weeks of being notified of completion of the works arrange for final inspection of the development to determine the satisfactory completion of all outstanding issues.
- 5) Upon final inspection of the development or phase of the development and satisfactory completion of the works, the Council will proceed to commence the Taking in Charge process by initiating the procedures under Section 11 of the Roads Act 1990, to declare public the road serving the residential development. All reasonable efforts shall be utilised to ensure that formal procedures are completed for the taking in charge process with minimum delay.

- 6) The developer will vest in the Planning Authority (at no cost to the authority) the public areas, including open spaces, which have been designated for taking in charge.
- 7) Following the making of an order to declare the road public, a Manager's Order will be prepared with map attached, stating that the area defined on the map has been taken in charge. Details will be recorded in the planning register (which is available for public inspection). The Bond will also be released. It will be necessary for Sligo County Council to formally take in charge the public water supply, and the foul and storm water drainage and the Borough Council will liaise with Sligo County Council to have this done as soon as possible, following the declaration of the road as public by the Borough Council.