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14th January 2018

RE: **SUBMISSION TO *"SUSTAINABLE URBAN HOUSING: DESIGN STANDARDS FOR NEW APARTMENTS" GUIDELINES FOR PLANNING AUTHORITIES, DRAFT UPDATE DECEMBER 2017.***
CLIENT: **HINES IRELAND LIMITED**

Dear Sir / Madam,

This submission to the Guidelines (Draft Update Dec 2017) is made on behalf of Hines Ireland Limited (hereafter Hines).

We would appreciate if 2 spaces can be reserved for the Apartment Guidelines workshop on Friday 26th January in the Custom House for the undersigned and a representative from Hines.

While recognising the Governments desire to being the Guidelines into effect at the earliest opportunity, we feel that the matters raised below are worthy of consideration at can be achieved with minimal changes to the Draft document.

GENERAL

Hines generally welcomes the new guidelines which contain a number of important new provisions and updates / clarifications on the 2015 Guidelines which will promote much needed housing supply. In particular, Hines welcomes the new guidelines relating to Build to Rent and Shared Accommodation formats, units per core, car parking and refurbishment as well as a range of changes which introduce flexibility.

While the submission is generally applicable, it relates primarily to the Hines lands at Cherrywood that are within the Cherrywood SDZ area.

Hines has an allocation of 3800 residential units across a number of "Development Areas" at Cherrywood and including a range of plots containing a wide range of housing and apartment

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typologies. Work has commenced on major roads, public utilities/ services and parks infrastructure at Cherrywood. When complete in the coming months it will mean that the Cherrywood lands will be "opened up" and the development of housing plots can progress. There is a current application before DLRCC for the Cherrywood Town Centre development and this application includes 1269 Build to Rent apartments. Planning Applications are also under preparation for a number of other residential plots (c.2500 dwellings) and a significant proportion of these developments will involve higher density apartment type development where the Apartment Guidelines will apply.

On the basis of the above, the provisions of the Draft Guidelines are of significant importance for Hines lands at Cherrywood and we request that the matters raised below are addressed in the final Guidelines.

PARAGRAPH 2.15 - SPECIFIC PLANNING POLICY REQUIREMENTS AND SDZs

The Updated Guidelines now include a revised / updated and consolidated presentation which include 9 specific planning policy requirements (SPPRs)**.** This clarity on SPPRs is welcomed.

We note however that it is essential that SDZ areas are given the same status as all other areas in terms of their ability to avail of the SPPRs which have statutory effect based on the provisions of the Planning and Development (Amendment) Act 2015).

In this context, a major issue addressed in this submission relates to Paragraph 2.15 of the Draft Guidelines which has implications for the Cherrywood SDZ lands (and all SDZs).

Paragraph 2.15 of the Draft Guidelines states as follows with the relevant text bold and underlined:-

> *2.15 In accordance with Section 28 of the Planning and Development Act 2000, as amended, planning authorities must apply the standards set out as planning policy requirements in these guidelines, notwithstanding local development plan objectives and requirements of local area plans and* ***subject to amendment as soon as may be practicable*** *~~,~~ SDZ planning schemes.*
>
> (emphasis added)

At the outset, it is recognised that it is possible that SPPRs could give rise to a requirement to undergo a formal amendment of a Planning Scheme, however, this should not be a default position and the Amendment process should only be followed if absolutely necessary.

In summary, Hines submission is that the Guidelines should :-

1. **remove the '*subject to amendment as soon as may be practicable'* requirement from Paragraph 2.15**

2. **Insert sentence at Paragraph 2.15 (similar but more clearly stated that in the 2015 Guidelines) to state that the intention is that SPPRs are applied to Planning Schemes in same manner as Development Plans/ Local Area Plans.**

The equivalent paragraph in the 2015 Guidelines did not refer to Amendment of Planning Schemes and stated as follows:-

> *2.11 Planning authorities must apply the standards set out as planning policy requirements in these guidelines, **notwithstanding local objectives and requirements of local area plans and SDZ planning schemes**.*
>
> (emphasis added)

The intent in relation to SPPRs was also clear in Paragraph 1.1 of the 2015 Guidelines which stated as follows:-

> *1.1 These guidelines update the "Sustainable Urban Housing: Design Standards for New Apartments" guidelines, published by the Department in 2007. **Where specific planning policy requirements are stated in this document, the Minister intends that such requirements must take precedence over policies and objectives of development plans, local area plans or strategic development zone planning schemes.** Furthermore, these guidelines apply to all housing developments that include apartments, whether public or private.*
>
> (emphasis added)

The Planning and Development (Amendment) Act 2015 also provides that SPPRs take precedence over local development plans where there is a conflict between their provisions. Section 34(2)(ba) of the Act states:-

> *(ba) Where specific planning policy requirements of guidelines referred to in subsection (2)(aa) differ from the provisions of the **development plan** of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the **development plan**.*
>
> (emphasis added)

We submit that reference to 'development plan' in Section 34(2)(ba) can and should be interpreted to include a Planning Scheme. In this regard, it is noted that Section 169(9) of the Act states as follows.

> *(9) **A planning scheme made under this section shall be deemed to form part of any development plan in force in the area of the scheme** until the scheme is revoked, and any contrary provisions of the development plan shall be superseded.*
>
> (emphasis added)

It may be that the revision was unintentional or merely responding to experience in Cherrywood since the 2015 Guidelines which gave rise to Amendments 1 – 4 which were granted by An Bord Pleanala in June 2017 (Bord Ref: 06D.ZE0002) and are now enshrined in the Planning Scheme.

The Planning Scheme Amendment process - Section 170A - was introduced under the Planning and Development (Amendment) Act, 2015 for the purpose of enabling a Development Agency to make "fast track" Amendments to a Planning Scheme without necessitating a full review process.

Following the publication of the 2015 Guidelines, Hines engaged with DLRCC in relation to establishing how the SPPRs in the Guidelines would affect the Planning Scheme. While it was considered that the procedural/ legal position was clear that SPPRs would supersede the Planning Scheme provisions in relation to apartment sizes and unit mix (PD 4 and PD5), having discussed the matter with DLRCC, it was decided that the Planning Scheme would be Amended to reflect the new Guidelines in the interests of clarity.

It was also the case that the Amendment process would not cause of delay as it coincided with the timing for submission of a planning application. A particular issue that informed that decision (which has now been addressed and does not apply now) was the clarification that what was presented as a "maximum" number of apartment units in the Town and Village Centres at Cherrywood is now to be "indicative" and it is possible to increase the number of apartments prescribed in the Planning Scheme subject to not exceeding the floorspace allocation (sq.m)

If the implication of the Draft Guidelines (Paragraph 2.15) is to make a Section 170A Amendment a necessary step to give effect to the Updated Guidelines, this is unnecessary and inappropriate in our submission.

SDZs Planning Schemes should not require formal Amendment process when a "non-strategic" area can available of the new Guidelines with immediate effect. Given the timescales involved (6-9 months) and the resource constraints of the Development Agency, the need for a formal Section 170A amendment process would put SDZS at a considerable disadvantage over all other areas which is entirely contrary to the objectives of the Government in relation to housing delivery.

As the Department will appreciate, there is an option open to SDZ landowners to make a planning application directly to An Bord Pleanala under the new Strategic Housing Development provisions of the Planning and Development (Housing) Act 2016. Any inference that there is a requirement for a formal Section 170A amendment process to give effect to the new Guidelines must also be considered in that context as it could undermine the benefit of this alternative planning process for SDZ landowners.

Therefore, the Outcome Sought is as outlined below:-

OUTCOME SOUGHT #1 PARAGRAPH 2.15

2.15 *In accordance with Section 28 of the Planning and Development Act 2000, as amended, planning authorities must apply the standards set out as planning policy requirements in these guidelines, notwithstanding local development plan objectives and requirements of local area plans and* ~~***subject to amendment as soon as may be practicable,***~~ *SDZ planning schemes.* ***Where specific planning policy requirements (SPPRs) are stated, the Minister intends that such requirements take precedence over policies and objectives of development plans, local area plans or strategic development zone planning schemes.***

- Text struckthrough to be deleted
- Text in bold to be inserted

APARTMENT DEISGN STANDARDS (CHAPTER 3.0)

Housing Mix (SPPR1)

The Guidelines recognition (SPPR1) that blanket housing mix standards are not appropriate is welcomed.

Housing demand in certain areas is such that it is appropriate that new apartment development in certain areas be allowed to provide a higher proportion of one bed or studio type units (up to 50%). Similarly, the statement in SPPR1 that there shall be no minimum requirement for 3+ bed apartments is welcomed.

However, we would have some concerns about the second part of SPPR1 which seems to provide a local authority with an opportunity to reintroduce housing mix standards for apartment and housing developments where these are based on a Housing Need and Demand Assessment (HNDA) as part of the Development Plan.

There is no question that housing mix in all instances should reflect the housing demand in a particular area. Therefore, the principle underlying the intention to match planning applications with local demand is reasonable. However, the concern is that there is potential here for uncertainty and inconsistency across local authority areas in how this derogation is implemented.

Therefore, it is suggested that the second sentence in Specific Planning Policy Requirement 1 (page 9) should be amended as follows.

OUTCOME SOUGHT#2 – HOUSING MIX

Specific Planning Policy Requirement 1

Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms.

Statutory development plans may ~~***specify***~~ ***indicate a suitable*** *a mix for apartment and other housing developments* ***within different local areas****, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).* ***Any housing mix standards in a development plan should be guidelines only and shall not be mandatory requirements.***

- Text struckthrough to be deleted
- Text in bold to be inserted

It may be noted that planning applications may demonstrate how a proposed unit mix in a new apartment development is appropriate consistent with local housing demand and the achievement of a mix of housing types within an area.

The clarity arising from the above change will also assist in the implementation of SPPR2 which is related to SPPR1.

Dual Aspect Ratios (SPPR4)

The revised/ consolidated provisions in relation to Dual Aspect Ratios are generally welcomed but some further clarity would be beneficial in relation to the issue of daylight and sunlight analysis which is increasingly being used and interpreted incorrectly/ inappropriately, giving rise to complications and uncertainty at planning application stage.

The current UK Guidelines are, in some instances, being treated as standards to be achieved in a pass/ fail manner and this has implications for site layout/ building heights which significantly impact on residential density achievable. This is particularly a consideration on central / accessible City/ Town Centre sites which cannot often meet the guidelines.

Therefore, the Apartment Guidelines in practice would benefit from the following insertion of a clear statement on the use / misuse of daylight and sunlight guidelines for apartments.

For example, we note the following wording in the Sustainable Urban Housing Guidelines - Urban Design Manual (2009):

'Where design standards are to be used (such as the UK document Site Layout Planning for Daylight and Sunlight, published by the BRE), It should be acknowledged that for higher density proposals in urban areas it may not be possible to achieve the specified criteria, and standards may need to be adjusted locally to recognise the need for appropriate heights or street widths."

It is noted that a similar statement is included in Paragraph 6.5 in relation to Shadow analysis. A statement to reflect similar sentiment in relation to the related topic of daylight analysis above would be appropriate in the Apartment Guidelines at paragraphs 3.16 – 3.19 and/or Paragraph 6.5.

Floor To Ceiling Height (SPPR5)

SPPR5 is unclear as it contains what appear to be mandatory requirements ("shall") and discretionary provisions ("generally" or "in general"). This would benefit from rewording to clarify as follows:-

Specific Planning Policy Requirement 5

Ground level apartment floor to ceiling heights ~~***shall***~~ ***will*** *generally be a minimum of 2.7m* ~~***and shall***~~ ***but may*** *be increased* ***to 3 metres at ground floor level for amenity and adaptability purposes.*** ~~***either at ground level only or in conjunction with all floors in an apartment block or building, in certain circumstances.***~~*. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.4ha (1 acre), planning authorities may exercise discretion on a case-by-case basis, subject to overall design quality.*

- Text struckthrough to be deleted
- Text in bold to be inserted

Lift And Stair Cores (SPPR6)

The increased units per lift/stair core per floor standard (previously 8, now 12) - SPPR 6 is welcomed and will provide greater scope of innovative design and great cost efficiencies.

Private Amenity Space

The private amenity space standards are retained but, importantly, a clause has been inserted at Paragraph 3.39 to allow relaxation of these standards in refurbishment schemes or on urban infill schemes. SPPRs 7 – 9 also extend greater flexibility to Build to Rent / Shared Accommodation Schemes where more appropriate and usable communal amenity space is provided in this type of residential accommodation.

Given the inclusion of the flexibility clause in relation to Private Amenity Space, we suggest that the Title of the Appendix 1 Table be changed to *'**Recommended** floor areas for private amenity space'*

COMMUNAL FACILITIES IN APARTMENTS (CHAPTER 4.0)

Communal Amenity Space

It is our experience that the communal amenity space requirement (on top of the private amenity space requirements) can be difficult to achieve in central urban situations and can result in reduced density yield.

Similar to the above submission in relation to private amenity space, it is considered that Title of the Appendix 1 Table be changed to *'**Recommended** floor areas for communal amenity space'*

Planning Authorities should be encouraged to be open to accepting relaxation in communal open space provision where local and site specific circumstances favour such an approach.

BUILD TO RENT AND SHARED ACCOMMODATION SECTORS (CHAPTER 5.0)

The incorporation of Build to Rent / Shared Accommodation developments into the Guidelines is welcomed. The following are Hines comments/ suggestions:-

Specific BTR Developments

It is noted at paragraph 5.10 that the Department will give consideration to establishing build-to-rent projects as a specific use class under the Planning and Development Regulations 2001 (as amended). While there is merit in considering this matter, it has wide ranging implications for the day to day presentation and processing of planning applications by Planning Authorities and exempted development provisions. These would need careful consideration to avoid any unforeseen consequences.

In this context, SPPR7 would benefit from further consideration/ refinement in the interests of clarity going forward..

Part (b) is clear and is acceptable. BTR development must be accompanied by detailed proposals for (i) Resident Support Facilities and (ii) Residential Services and Amenities.

Part (a) requires rewording for clarity and the first sentence in particular could be broken up. It introduces a number of questions, including

- It is merely required to refer to the words "Build to Rent development" in the public notices? (Does the same principle apply to Shared Accommodation?)
- The sentence reads that the public notices need to mention proposed covenant/ legal agreements. Is this the intention ?
- Do planning applications for BTR need to be accompanied by proposed covenant/ legal agreements? Is it for a developer to draft the covenant/ legal agreement and submit with a planning application ?
- Are these planning application validation issues?
- Are there change of use implications in instances where a permitted scheme that includes a standard apartment mix (that was not described in a planning application/ permission as BTR) is changed from an owner occupier to a Build to Rent funding / management model ?

It may be that some elements of SPPR7 might be better included in Chapter 6.0 (Apartments and the Development Management Process). These procedural aspects of the matter can be addressed if the Department changes the Planning Regulations.

Alternatively, a rewording is suggested along the lines of the following:-

Specific Planning Policy Requirement 7

BTR development must be:

(a) Described in the public notices associated with a planning application specifically as a 'Build-To-Rent' housing development

(b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as:
(i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.
(ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

Planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period. The condition may require a covenant or legal agreement

- Rearrange text or remove text in bold and include in Chapter 6.0

Energy / Building Regulations

While it is primarily a Building Regulations issue, the Apartment Guidelines could usefully recognise that there may be consequences for Building Regulations Certification arising from the particular characteristics of Build to Rent and Shared Living type developments. For example, BTR developments could be considered as a single commercial building, similar to a hotel or student housing, rather than residential. There are practical merit in this approach and potential for savings in per unit construction costs.

The insertion below is suggested

Insert new paragraph at the end of Section 3, as follows:-

'Energy

3.43 From a building regulations perspective, similar to student residential developments, purpose built and centrally managed Build to Rent or Shared Living apartment developments may be treated in the same manner as "commercial" buildings (Part L Non domestic category) and certification may be sought for a block of apartments rather than for individual apartments.

- Text in bold to be inserted

The Building Regulations should also be reviewed in this regard.

APARTMENTS AND THE DEVELOPMENT MANAGEMENT PROCESS (CHAPTER 6.0)

As stated above, there are potential issues arising if BTR/ Shared Accommodation are intended to be given a separate use class and we note that these matters will be considered in the context of the Planning Regulations. The issues of site notices and BTR covenants/ agreements, being a development management issue, may be better addressed in Chapter 6.0.

Paragraph 6.7/6.8 is a welcome and important provision that introduces the concept of "compensatory design solutions" which we feel could be useful to allow non-standard situations to be considered on a qualitative and case-by-case basis.

CONCLUSION

We trust that the comments and suggestions above are useful in your deliberations and we look forward to the publication of the Guidelines in due course

Yours sincerely,

Ray Ryan
BMA PLANNING
[redacted]

cc.
Brian Moran, Hines
David Dumigan, Hines
Ian Lydon, Hines