

A Guide to Taking in Charge of Completed Residential Developments

This leaflet is a simple guide on the taking in charge by local authorities (county and city councils) of fully completed private residential developments. Residential developments consisting of two or more dwellings that have been granted planning permission under Section 34 of the Planning and Development Act 2000, as amended, may be eligible (depending on the conditions attached to the planning permission) for taking in charge.

..... This leaflet sets out what is meant by the term *'taking in charge'*, who can seek to have a completed development taken in charge and the procedures involved. This leaflet is intended as a practical guide. It is not a definitive legal interpretation of planning law. For further information, you should contact your local planning authority (city or county council).

1. What is taking in charge?

Taking in charge is a formal legal process by which responsibility for certain public areas, structures and services in a private residential development or estate are transferred to, or put in the charge of, a local authority.

When a residential development is complete, the developer or the majority of the homeowners may submit a written request to the local authority to have the development taken in charge. If the local authority is satisfied that the development has been completed in compliance with the conditions of the planning permission and the local authority's technical requirements, then it is required to take control of the operation, maintenance and upkeep of the public roads, lighting and similar services.

2. What are the services and structures usually subject to taking in charge?

Examples of service and structures taken in charge by a local authority include:

- Roads and footpaths,
- Lighting,
- Sewers, watermains and service connections (in agreement with Irish Water),
- Stormwater drainage,
- Playgrounds,
- Open spaces and green areas,
- Car parks, *and*
- Fire services including fire hydrants

Please note that this is not an exhaustive list, and the position may vary across local authorities.

3. Is taking in charge relevant to where I live?

This will depend on a number of factors including:

- the planning permission for the development where you live and any conditions attached to that grant of planning permission;
- whether the development is complete; *and*
- the type of estate, conventional or traditional housing estate, infill development, multi-unit development, etc.

4. What is the role of a local authority in the taking in charge process?

The local authority must be satisfied that the development has been completed in accordance with any conditions attached to the planning permission. Subject to certain provisions, upon the request of a developer or a majority of the homeowners in the development, a local authority is required to take charge of the roads and related services.

Even if a development has not been completed to the satisfaction of a local authority, if four years have passed since the expiry of the planning permission and no planning enforcement action has been taken, a local authority is obliged to take the development in charge if the majority of the homeowners submit a written request.

A local authority has six months from the date of a request for taking in charge to commence the relevant procedures. Following a Taking in Charge request, a local authority will usually arrange for an inspection of the development. This is to ensure that all works have been completed in accordance with the conditions of the planning permission and to the required standards to allow the taking in charge to proceed.

A local authority, when it issues a grant of planning permission, may require a developer to lodge with the local authority a cash sum or an insurance security bond. The sum or bond is released back to the developer when the development has been completed to the satisfaction of the local authority. Where the development is not completed to the local authority's satisfaction, it may use all or part of the money to complete the works.

A local authority also engages with Irish Water regarding the taking in charge of water services.

Each local authority has a taking in charge policy and procedure. These documents are generally available on the local authority's website.

5. Do councillors (elected members) have a role?

Yes. Councillors are responsible for considering objections or representations regarding a proposal for the taking in charge

of the roads and services in a development. They are also responsible for making the order for taking a road in charge. This is done by a resolution passed at a council meeting.

6. Is there legislation I should know about?

Section 180 of the Planning and Development Act, 2000, as amended and Section 11 of the Roads Act, 1993 provide the main legal basis for taking in charge.

The Department of Housing, Local Government and Heritage has issued a series of related circulars to local authorities, these include:

- PD 1/06 Taking in Charge of Housing Estates/Management Companies
- PD 1/08 Taking in Charge of Residential Developments/Management Arrangements
- PL 11/2013 Re: Provision of Security provided under Section 34(g) of the Planning and Development Act 2000 - 2010 for the satisfactory completion of residential housing developments
- PL 5/2014 Re: Matters related to the Taking in Charge of Residential Developments
- FPS3/2016 Re: National Taking in Charge Initiative for Residential Estates (NTICI)
- L(DPI)01-2020 Re: Approval of projects (residential estates) under the Developer Provided Water Services Infrastructure under the Multi-annual Developer Provided Water Services Infrastructure Resolution Programme 2019-2021

7. Where do I find out about a grant of planning permission for my estate?

The planning department of your local authority keeps records of planning applications and decisions. Each application will have a planning file with a unique application reference or file number.

Most local authorities operate a web-based planning application system, and records are available online.

8. What is the role of builders and developers in taking in charge?

A builder or developer may request a local authority to take in charge the public roads and related services of an estate. The developer is required to complete the works in accordance with the planning

permission and any conditions attached to the permission, and to the satisfaction of the local authority in line with its taking in charge policy and procedures, and roads and water services standards.

Usually, the developer must submit a completion certificate to the local authority. Drawings of 'as-constructed' roads and a drainage survey may be required. If required, any wayleaves and transfers of title (for example, in relation to public open spaces) must also be arranged.

9. What role does a residents' association have?

A residents' association may request that the local authority take in charge the public areas in the estate where they live.



10. Do Irish Water or other utility companies have a role?

A local authority will engage with Irish Water in relation to the taking in charge of water services.

11. Are there costs involved with the taking in charge process?

The costs of completing public areas to the satisfaction of the local authority and in accordance with the planning permission are a matter for the developer.

12. How does taking in charge work in apartments and other multi-unit developments?

Taking in charge does not usually apply to private areas of an estate owned by an owners' management company (OMC) on behalf of the residents.

A planning permission and any conditions attached to the construction of a multi-unit

development (MUD) will define the parts of an estate to be transferred by the developer to the OMC. It will usually set out the parts of the estate, if any, to be taken in charge by the local authority. For example, it could be that the roads in a MUD comprise a mix of public and private roads, where public roads are subject to taking in charge, and private roads are owned and managed by an OMC.

13. What role in taking in charge has an OMC?

An OMC owns and controls the common areas of a MUD. Under the Multi-Unit Developments Act 2011 (MUD Act), the transfer of common areas does not relieve a developer of its obligation to complete an estate in compliance with the requirements and conditions of a planning permission.

A developer must provide an OMC with confirmation that an estate has been completed in accordance with all relevant planning permissions except for a condition relating to the payment of a financial contribution.

14. How do I understand property ownership in a MUD?

Questions about property rights and services in a MUD are, in the first instance, best raised with an estate property management agent who is usually appointed by an OMC for the day-to-day running of an estate. It is recommended that OMCs and individual owners in MUDs seek independent legal advice. Under the MUD Act, an OMC must have independent legal representation in



relation to the negotiation of a contract for the transfer of an estate's common areas from the developer to the OMC. The reasonable costs of representation are met by the developer.

15. What about 'gated' complexes?

Taking in charge does not normally apply to private residential complexes such as multi-unit developments, gated developments, retirement villages and holiday home developments that were authorised and operate on the basis of a private management company or other similar such arrangement.

16. Where can I obtain more information about taking in charge?

Each local authority has a Taking in Charge policy. Guidance on the policy that applies in your area is available from the roads, traffic, or planning department of your local authority. A copy of the Taking

in Charge policy is generally available on the website of the local authority.

17. Where can I obtain more information about MUDs and OMCs?

The Housing Agency has developed general information and resources for stakeholders in MUDs and OMCs. These include guides and training webinars, available on the Housing Agency website www.housingagency.ie.

The law governing the planning system is set out in the Planning and Development Act 2000, as amended and the Roads Act 1993. You can purchase these from the Government Publications Office by phoning their call centre on (046) 9423100 or at publications@opw.ie or download them from the Department of Housing, Local Government and Heritage's website www.gov.ie/housing. Legislation is also available to view and download from www.irishstatutebook.ie.



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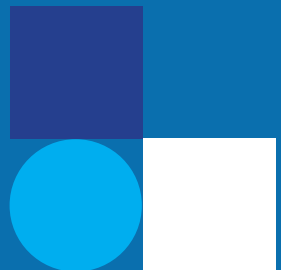
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