

Completion Certification for Multi-unit Development

This paper is published by those administering the Building Control Management System (BCMS) as part of consultation on how the variety of matters related to the production of paperwork related to the completion of housing estates, apartment developments, industrial estates, shopping centres, etc. will be dealt with. This is for all developments where there will be a break-up of the initial development into multiple units that will be disposed of separately through legal conveyance of one type or another.

In this context it is appropriate to highlight the dangers of combining and confusing regulatory codes that are entirely different, though they all deal with building or site development.

This paper is primarily related to matters of compliance with the Building Control Regulations but it has been decided to include consideration of compliance with Planning and adherence to standards for Taking-in-Charge of parts of developments, as may be required by Local Authorities, principally by way of drawing attention to the differences between them and the requirements under Building Control Regulations.

These other two are explored separately following the detailed explanation of evolving policy related to Completion Certificates for multi-unit development under Building Control Regulations – the primary focus of this paper.

A Compliance with Building Control Regulations

As part of the configuration of the means whereby Completion Certificates are generated by the BCMS the team is undertaking a detailed review of the processes around the assembly of Completion Certificates in general. This is to complete the suite of on-line documents that will generate Completion Certificates for developments commenced after 1st March 2014 – the date from which the amendment regulations for Building Control (S.I. 9 of 2014) came into effect.

For the sake of clarity the regulatory context for Commencement Notices and Certificates of Compliance on Completion (*for brevity these are referred to as "Completion Certificates" throughout this paper*) is cited here

"Lodgment of a commencement notice refers to the giving of notice to building control authorities of the erection of such buildings, or classes of buildings, or the carrying out of such works, or classes of works, as may be specified in the regulations, to commence within a specified time. An Assigned Certifier and Builder are identified with each Commencement Notice and undertake to sign the Certificate of Compliance on Completion of the works."

Building Control Authorities have been facilitating the generation of hard copy Completion Certificates as they have become needed until the more complex issue of multi-unit development Completion Certificates through online systems is settled.

In consideration of the importance of this issue related to multi-unit developments it was decided to circulate a summary, and in that regard we set out here below those considerations as a numbered sequence for ease of reference thereafter. These are followed by a brief summary of the conclusions reached. These conclusions are solely related to Building Control Regulation Compliance.

1. While the assembly of the Certificates for single-phase development completed as one unit matches the statutory forms, the same is not true for development that will require Completion Certificates for individual parts of development for which a single Commencement Notice was lodged.
2. In response to submissions and the consultation carried out in the time prior to date of enactment the structure of the software that drives the processing of the BCMS was configured to allow multiple Completion Certificates to be generated from single Commencement Notices. These submissions strongly favoured the generation of Completion Certificates solely related to single properties so as to form part of the title of those properties.
3. The work that has been ongoing in the assembly of systems whereby Completion Certificates are generated on-line and held digitally on the Building Control Register has necessarily included every combination of circumstance that had been encountered or could be imagined by those involved in the administration of Building Control. This work has included the exploration of multiple solutions ranging from the single certificate for single properties, as described, to systems whereby multiple interdependent certificates would be required for single properties within multi-unit developments.

Having explored these scenarios the strong preference is for the simplest and most straightforward system whereby single Completion Certificates are generated related to each single legally distinct property – as may be so designated.

4. This work also included examination of the preference for distinct Commencement Notices for each unit in multi-unit developments – that is multiple Commencement Notices for multi-unit developments. The consensus favoured single Commencement Notices for developments that would subsequently require multiple Completion Certificates.
5. The question of whether it is sufficient to have a single Commencement Notice for entire developments or separate Commencement Notices for each phase of development in multi-unit developments was considered.

Factors that influenced consideration in this context included the length of time that might elapse between commencement of the first units on large development sites and those commenced towards the end of the scheme development. Large development sites are typically disposed of to builders who had no involvement in the site assembly and/or the overall scheme design. Large developments also have had staggered, as opposed to continual, development patterns where it is not uncommon that these have extended to years between commencement and the completion and disposal where staggered development has occurred.

In this context it is relevant that Section 8 the Building Control Regulations 1997 determines that development must commence on a specified date between 14 and 28 days submission of the Commencement Notice. Building Control Authorities are thus made aware of construction of buildings on site.

6. Those with responsibility for scheme commencement – Owners and Builders – must exercise judgment on the likely pattern of development to address the issue of lodgment of applications for Commencement Notices where the extent of commencement works that will commence within 14 to 28 days from receipt of the validation of the Commencement Notice is relevant for or related to all buildings to be constructed where:-

- Is it anticipated at the stage immediately prior to the lodgment of the application for Commencement Notice that the entire scheme will be completed in one uninterrupted phase or in two or more phases; and/or
- The entire development will be completed and disposed of by more than one builder.

Should scheme development proceed in phases, rather than continuously to completion, then separate Commencement Notice applications must be lodged for each phase of development.

7. In support of the requirement to have separate Commencement Notices for each phase of development in multi-unit developments it has been the experience of Building Control Authorities that it has proven necessary, on foot of enquiries, to check dates of Commencement Notices to cross reference Building Regulation as it applied at that time so to assist in the assessment of compliance of developments with Building Regulations. In this regard it is relevant to interpret the intention of the legislature, in framing the requirement to commence within 14 to 28 days of validation of Commencement Notices, as a means to ensure consumer protection in terms of best adherence to the then most up-to-date statutory requirements for buildings.
8. Much of the focus of consideration related to the practicality of the assembly of Completion Certificates by the Assigned Certifier and the Builder. In multi-unit development it is almost always the case that the state of compliance of development outside the legal boundaries of the property fundamentally influences the compliance of the development within those boundaries with the Building Regulations. This clearly varies by magnitude of influence if one compares the state of compliance of “off-property” development for say a

detached house in a housing estate connected to water supply and disposal utilities compared to say a penthouse apartment.

For example when certification of compliance for either the detached house or the penthouse apartment is under consideration the availability of core services – say a potable water supply and systems for the conveyance and treatment / disposal of foul water, unimpeded access for fire services etc. – in the case of the house and, in the case of the penthouse - the structural integrity of frames outside the property but supporting it, safe means of escape etc. – all relate to the compliance of the individual property itself in either case. These are wholly part of the compliance of each unit and cannot be separated from it.

This has implications for how phasing can or may be assembled as outlined above.

9. During project planning prior to construction stage it is essential that the sequencing of the disposal of each individual unit (or blocks of units) is given detailed consideration. Sequencing by phasing or otherwise, as individual units in multi-unit development are sold, will only be possible if the integrity of each in respect of the facilities availed of it, by virtue of being part of a multi-unit development, make it absolutely compliant with the Building Regulations. This may imply construction of temporary works to allow disposal of part of the development that is rendered compliant by that work.

For example an early phase of housing development may not include turning circles that are necessary to give required access for fire service or emergency vehicles. In such a case it will be necessary to construct temporary turning circles and these can only be removed when the permanent, compliant versions are completed.

10. The BCMS team is currently considering the assembly of guidance for Building Control Authorities (BCAs) for means whereby they can assess if phasing – submitted as part of Commencement Notice applications for multi-unit developments – includes sufficient consideration for compliance of units for disposal in the overall development or in each phase as proposals for phasing are submitted.

It is fundamentally in the interest of the Owner, the Builder and the Assigned Certifier that they carry out such evaluation at the earliest stage of scheme design. The Building Control Authority may, at its discretion, judge that such consideration is not evident and judge that the application to be invalid – on the grounds that it will include parts of development that, of themselves, will be non-compliant on completion - as a consequence.

Summary of principles arising:

- I. Submission of a Commencement Notice for each individual property in multi-unit developments is inappropriate, having regard to the multiple factors that lie outside the site boundaries of individual properties that

influence compliance of each unit with Building Regulations. Building Control Authorities have the discretion to render such multiple notices Invalid on grounds of the exclusion of factors influencing compliance with Building Regulations that lie outside site boundaries and thus from the scope of the application;

- II. Submission of a single Commencement Notice is appropriate for multi-unit developments solely where the entire development is to be completed continuously from Commencement in one phase;
- III. Where multi-unit developments are intended to be completed in phases, separate Commencement Notices should be submitted for each such phase that is, of itself, intended to be developed continuously to completion;
- IV. Each individual property within each phase, where phasing is applied, must comply with Building Regulations at the time of disposal, including compliance with matters that lie outside the legal boundaries of each such individual unit but that impact on that compliance;
- V. Part of the submission at Commencement Notice stage, where phased disposal of individual properties is planned, must describe how such compliance will be achieved, including description of such temporary measures as may be necessary to be provided during the works to complete the entire scheme to achieve such compliance at all times for all phases of completion.

B Compliance with Planning

In this context there are matters related to Planning that are entirely different and separate from Building Control.

In the interest of clarity it is preferable that these are expressly different and not in any way combined as regards Compliance with the differing codes. Matters that may have been specifically referenced in the Planning Application documentation and that are thus material to the Grant of Planning Permission include issues related to finishes, to hard and soft landscaping, to contiguous buildings, to how buildings and places are required to be conserved etc. For this reason it is essential that those requested to assess the overall statutory compliance of finished buildings clearly distinguish between Planning and Building Control Compliance for each conveyance. For example in the cases of housing estates, apartment complexes, industrial parks there will regularly be landscaping and provision of amenity facilities to be used in common. These will be shown in the estate layout plans thus requiring facilities used in common to be completed so that the overall development complies with Planning Permission. It will be necessary to have regard to those common facilities as part of consideration of the compliance of individual properties for this reason.

It is thus preferable that the greatest clarity is brought to bear in the Planning Application for the full development on planning of phasing of construction of multi-unit development, as has been set out above in relation to phasing for compliance with Building Regulations. Such planned phasing can and should set out the iterative provision of landscaping and facilities to be used in common in general so that the level of compliance that will apply at each phase is expressed in unambiguous terms and can be assessed as compliant or not accordingly.

NB The certification of compliance with Planning is an entirely separate process to that for Compliance with Building Regulations. The certification of compliance with Planning will likely most frequently be required as part of Conveyancing process for disposal of property in a development.

C Compliance for the purposes of Taking-in-Charge by the Local Authority

Standards for Taking-in-Charge of facilities and services will be specific for every local authority, as it will be for providers of utility services such as water supply and disposal, gas, electricity, cabled services etc.

The Local Authority Standards will likely include the provision of a Bond or Bonds, by the developer of the scheme, as a means whereby the Authority has access to funds to effect the completion of the common areas of developments if the developer fails to adhere to the said Standards for scheme completion. While utility connections are fundamental to the operational compliance of building services, and thus Building Regulations, this may not be so for facilities and finishes that form part of the development, for which statutory approval has been granted, the responsibility for upkeep of which will become that of the Local Authority.

For example the absence of finishing courses on roadways or the completion of landscaping, playgrounds or other facilities as may be required within the standards for Taking-in-Charge but will not render the development, or individual units therein, non-compliant with Building Regulations. Compliance with Part B for access for Fire or Emergency vehicles is possible where these can access properties even in the absence of road finishing courses. This will emphatically not be the case for services upon which each property is reliant for compliance with Building Regulations. In such a case "temporary" arrangements for the disposal of wastewater – for example – being so fundamental to compliance that it cannot be regarded as being capable of being provided through interim or temporary arrangements during phased development.

Thus it is again preferable that there is clarity around compliance by way of developments being ready to be taken-in-charge, expressed clearly in separate terms from compliance with Building Regulation and Planning. The provision of regulation, whereby Taking-in-Charge is rendered possible when 80% of the development has been completed is relevant in this context. It will be the case

that enquiry regarding the status of Bonds – if the developer has been released from the Bond – will help in determining the state of progress of scheme completion to Taking-in-Charge Standards in any such case.

In this case also planned phasing related to sequencing of Taking-in-Charge will give the greatest clarity for applicants, certifiers and property purchasers alike.

18th November 2014

All submissions and comments on the proposals outlined or on any aspect of the matters related to Completion Certificates should be made by email to the Programme Management Office established by government on foot of the Local Government Efficiency Review at info@lgerpmo.ie that coordinated the establishment and launch of the BCMS and under whose aegis the system is managed, maintained and developed.

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