

Executive Summary: Guidelines for Developers on the Implementation of Part V of the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2002

Note

This document is intended to provide general guidance to developers on the implementation of Part V of **Planning & Development Act 2000 as amended by Planning and Development (Amendment) Act 2002** (from now on referred to as "*the Act*"). It does not purport to be a legal interpretation of the relevant Sections of the Act or of Regulations made under it. No statement within this document should be construed as being legally binding on any party. **For a more detailed explanation of the process, developers should consult the main document.**

Introduction

Under Part V of the Act it is a requirement of planning permission for new housing developments that a certain portion of the land – up to 20% - be reserved to meet the need for social and affordable housing.

Part V of the Act enables local authorities to achieve this strategy by requiring housing developers to enter into an agreement, with the appropriate Local Authority, to provide houses, fully or partially serviced sites, or land or an equivalent monetary contribution for the purposes of Social and Affordable Housing. It also sets out the terms of such agreements and the manner in which compensation will be decided.

This document is designed to help developers by outlining the procedures involved in submitting a successful proposal.

For more detailed information on the Act, and to access the necessary forms to complete an application, Developers should log onto their Local Authority's web site.

1. Exempted Developments

The following types of residential developments are exempt from requirement to comply with Part V and do not require an exemption certificate:

- a) developments of Social housing for letting by an approved housing body
- b) conversion of buildings to housing, where at least 50% of the external part of the building is being retained.
- c) carrying out of works to an existing house.

Exemption certificates can be applied for at pre-planning stage where:

- d) Development consists of 4 or fewer housing units, or
- e) Land is 0.1 hectares or less.

In applying for exemption certificates developers must consult with local authority to ascertain necessary documentation to accompany submission.

Decisions on applications for exemption certificates must be issued within 4 weeks (unless further information is required). If the Council refuses to grant an exemption certificate, the applicant has 3 weeks in which to appeal to the court. Granting of an exemption certificate does not in itself guarantee the granting of planning permission.

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2. Options for Compliance with Part V

There are a number of options for an Agreement between the Developer and the Planning Authority. These are:-

- Transfer of completed dwellings, fully or partially serviced sites, or a portion of the site, on the site the subject of the application
- Transfer of completed dwellings, serviced sites or land at another location.
- Payment of a monetary contribution

An agreement may also provide for a combination of any of the above. The preferred option of each local authority will be informed by its Housing Strategy and is as follows:

Policy HSG 12: Social/Affordable Housing
It is the policy of the Council to facilitate the implementation of the County Housing Strategy. To address the current imbalance between housing demand and housing supply, the following shall be required by agreement under Part V of the Planning and Development Acts 2000-2002: 20% social₁ and affordable₂ housing will be required on all sites that are zoned for residential or a mixture of residential and other uses.

3. Submission on Planning Applications

This process can be divided up into a number of stages:

3.1 Pre-Planning Consultation Process

Prior to lodging a planning application, an applicant is strongly advised to engage in pre planning consultation with the Planning Authority. As a prerequisite to any such meeting, the information detailed below should be submitted 2 weeks in advance.

3.2 Outline of proposed Scheme

- (1) Location and area of the site
- (2) Initial estimate of total number of housing units it is proposed to construct, proportion of different house types (scale 1:500) and layout
- (3) A broad indication of size of units proposed
- (4) Details of existing and/or extent of proposed services for site
- (5) Existing use of land
- (6) Location of community services including shops, schools, etc.
- (7) Location of proposed Community Centre/Creche facility if applicable.

3.3 Details of Developer

- (1) Principals of development company.
- (2) Previous developments by company
- (3) Proposed project team, including architect, engineer, builders, sub-contractors etc.,
- (4) Health and Safety project supervisor, design and construction stage.
- (5) Quality Control Policy of company
- (6) Membership of C.I.F. and Homebond or agreed alternative.

3.4 Programme

- (1) Proposed start date of scheme and anticipated programme for completion of scheme.

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3.5 Compliance with Part V

- (1) An indication of the developers' preference for complying with Part V of the Act.

3.6 Outline of Compensation Sought

- (1) An indication of the level of compensation and method of calculation
- (2) Details regarding date of purchase
- (3) If the site was purchased prior to 25th August 1999 must also include proof of price paid, price sought for land cost element if purchased and breakdown.

The Local Authority will give an indication of the numbers of each type of dwelling it requires. Developers should incorporate these into their layout in accordance with Department of Environment Heritage and Local Government (henceforth 'DoEHLG') social housing guidelines (see www.environ.ie for details).

4. Preparation of Part V Submission

- 4.1 In addition to the information required above, each application must include a proposal for compliance with Part V. The details of the information to be submitted will depend on which option for compliance with Part V is proposed as outlined below.

4.2 Provision of Housing Units Option

The following details should be submitted:

- (1) The location area and accompanying map of the land which is the subject of the planning application
- (2) Location and area and accompanying map of land which it is proposed to transfer to the Local Authority
- (3) Proposals for boundary treatment of same land.

- (4) Details of any site investigations undertaken and/or any other relevant information in relation to land.
- (5) Details of any encumbrances relating to land such as Rights of Way, Wayleaves, underground and/or overground services etc.,
- (6) Confirmation that Freehold title can be transferred to Local Authority.
- (7) Planning developers shall submit drawings and specifications of the Units proposed to be transferred to the planning authority.

4.3 Provision of Serviced Sites or Land Options

Documentation outlined as in (1) to (6) above

4.4 Provision of Financial Contribution Option

Where the Planning Authority has indicated that a financial contribution is acceptable, the Applicant should set out clearly the method of calculation and the amount of contribution proposed.

5. General Guidance on Preparation of a Part V Proposal

5.1 Mix of Unit Types

Where Social or Affordable Housing Units are to be transferred to the Planning Authority the mix of unit types will be determined by demand in the proposed development area. The Planning Authority will provide information on social and affordable requirements of the area. In some cases it may be appropriate to specify a certain category of need for occupation of units. Final design may reflect the special needs where appropriate. The general demand in larger urban areas will be for a mix of 2, 3 and 4 bedroom units.

5.2 Department Requirements

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When a proposed development, which includes Part V units has been through the Planning Process, the Housing Authority must make a formal application to the DoEHLG for a budget cost approval and cannot conclude an agreement pending such approval.

6. Design Standards

6.1 It is essential to achieve affordability through the use of efficient layout, design and construction, without compromising standards or quality.

DoEHLG social housing and site development guidelines should be used as reference documents. (See www.environ.ie)

Developers need to have regard for the following issues in relation to design standards:

- Requirements of the Development Plan and achievement of high quality design.
- Any Part V units to be outwardly indistinguishable in appearance from rest of the development.
- Location of Part V units to ensure social integration, with detailed specification (size, building materials, finishes, fittings etc.) subject to agreement
- Spatial standards as recommended in DoEHLG Social Housing Design Guidelines 1999
- "Own door" access directly from exterior is critical in securing privacy of unit residents.
- Refuse storage (collection etc.), laundry arrangements to be clearly defined and agreed at consultation stage.
- Equal proportion of car parking spaces to be transferred with Part V units.
- Where practicable individual amenity per unit to be provided and need for management company arrangements should be avoided.

7. Part V Agreement

This is a legally binding arrangement negotiated with the Planning Authority.

If planning permission is being granted for a development subject to Part V a condition will be attached requiring the applicant or any interested party, enter into an agreement with the Planning Authority. The planning condition will require that the agreement be finalised **before** development commences. It will also apply to any subsequent purchaser of the site.

8. Content of Agreement

8.1 The content of the Part V Agreement will depend on the option agreed. Where completed dwellings are to be transferred the agreement will specify:-

- a) The number and location of the units
- b) Drawings and specifications for the units
- c) Proposed phasing of development
- d) Details of management/maintenance agreement
- e) Infrastructural services to dwellings
- f) Monetary Compensation

8.2 Where serviced sites or land is to be transferred the agreement should include:

- a) Location and area of sites/land to be transferred
- b) Map of sites/land
- c) Infrastructural services serving or to be provided for sites/land
- d) Boundary treatment
- e) Open space and landscaping proposed
- f) Monetary Compensation.

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9. Assessment of Compensation

9.1 Compensation payable for completed dwellings, sites or land will be negotiated with the appropriate Authority. (See Appendix 2 of the main document.)

For any alternative agreement to reserved land the Planning Authority will have to receive equivalent monetary value. This amount will be based on the difference between the existing use value and the development value of the land with planning permission.

9.2 Housing Units

In the case of transfer of completed dwellings compensation payable will be based on

- (a) Compensation for land (see 9.6 below)
- (b) Building and attributable site development costs (see 10 below)
- (c) Building cost
- (d) Design, Planning and Professional fees
- (e) Provisions of the Development Contribution Scheme in operation.
- (f) Cost of Finance
- (g) A reasonable commercial profit (see 11 below)

9.3 Serviced sites

In the case of transfer of partially or fully serviced sites compensation will be based on

- (a) Compensation for land (see 9.6 below)
- (b) Attributable site development costs (see 10 below)
- (c) Design, Planning and Professional fees
- (d) Provisions of the Development Contribution Scheme in operation.
- (e) Financial Costs
- (f) A reasonable commercial profit (see 11 below)

9.4 Land

In the case of transfer of land compensation developers should refer to:

- (a) Compensation for land (see 9.6 below)

9.5 Monetary Contribution

Compensation shall be based on the monetary value of the land that would be transferred. Where a monetary contribution is the basis for an agreement, the amount payable shall be equal to the difference between the market value and the existing use value of the land.

9.6 Compensation for Land

- Where land purchased **after 25th August 1999** compensation shall be based on "*Existing Use*" value of land. This is calculated on assumption that it was at the time and would remain unlawful to carry out a development on the land other than exempted development.
- Where land was purchased, or agreement to purchase obtained **before 25th August 1999**, compensation will be based on price paid, or agreed to be paid, plus interest, or the existing use value, whichever is the greater.

Where land is transferred to Planning Authority there is no provision for profit.

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10. Building and Attributable Development Costs

- 10.1 Where houses or partially/fully-serviced sites are transferred, calculation of the building and/or attributable development costs should take account of associated development costs to include:
- Labour and materials, design and professional fees, overheads and other financing costs associated with above.
- 10.2 Where houses are transferred, “*Attributable development costs*” will apply to the site development works. Costs to be determined on an average per unit basis.

11. Reasonable Commercial Profit

Profit is to be taken as meaning a reasonable profit, determined by reference to prices for work pertaining to competitive tenders for similar work current in the locality. Houses to be provided must be affordable and agreement must clearly state price at which units are to be transferred. In the absence of agreement on these matters, the default position will be the transfer of land in accordance with the Council’s Housing Strategy.

12. Dispute Resolution

- 12.1 If there is disagreement over the terms of an agreement then the Act provides for appeals to either
- 1) An Bord Pleanala
 - 2) The Property arbitrator
 - 3) The Circuit Court

12.2 Matters, which can be referred to An Bord Pleanala, include any disputed matter for inclusion in the agreement, other than those listed for the sole jurisdiction of the Property Arbitrator.

12.3 Matters, which can be referred to the property arbitrator, include

- 1) Number and price of housing units for transfer, including site, building and development costs
- 2) Number and price of sites to be transferred, including site and development costs
- 3) Compensation payable to developer
- 4) Compensation payable to planning authority in lieu of transfer of land
- 5) Payment of monetary contribution to planning authority in lieu of other options.

12.4 The applicant is entitled to appeal to the circuit court against the refusal to grant an exemption certificate.

13. Allocation of Completed Housing Units, Sites or Land

The allocation of social and affordable housing is at the sole discretion of the local authority. The use of sites/land will be at the sole discretion of the local authority.

14. Control of Resale of Affordable Houses

Section 99 of the Act requires the planning authority to impose controls on the resale of house or sites provided, or made available to them, under Part V.

15. Role of the Voluntary & Co-operative Housing Sector

Under Section 96 where a developer transfers to a Planning Authority land, sites or houses the authority may in turn make these available to a voluntary or co-

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operative housing body approved under Section 6 of the Housing Miscellaneous Provision Act 1992.

Councils will consider any proposal by a developer to work with a Voluntary or Co-operative body to provide housing and or sites under the terms of Part v of the Act.

Further Information

Developers should note that this is an Executive Summary of the *'Local Authority Guidelines for the Implementation of Part V document'* which is available on request from South Tipperary County Council. For more detailed information on the Act, or for copies of relevant documents developers should contact their local Planning Authority directly or through their web site <http://www.southtippcoco.ie/>

APPENDIX 1: PART V PROCESS

