An Ghníomhaireacht Tithíochta
The Housing Agency

Changes to Part V FAQ Document, October 2021

1. **Does the local authority[1] need to update its Housing Strategy to bring it in line with the Act before being in a position to apply a 20% Part V requirement to grants of planning permission?**

   Section 96(1) of the Planning and Development Act 2000 has been amended to state that "*the provisions of this section shall apply to an application for permission for the development of houses on land…*" and has replaced the reference to *"…a development plan objective requires that a specified percentage of any land…".*

   Section 96(3)(a) also now states that *"an agreement under this section shall provide for the transfer to the planning authority of the ownership of 20 per cent of the land…"* There is no reference to a housing strategy restriction in this amended provision. It is therefore our understanding that following the commencement of the Affordable Housing Act 2021 on September 3rd, a 20% Part V requirement applies to all Part V conditions on planning permissions granted after this date, regardless of what is set out in the housing strategy. Exceptions exist for applications that meet the criteria for the transition arrangements set out in section 96(3)(j)(ii). In the absence of need in the housing strategy for affordable purchase or cost rental housing, the Part V requirement of 20% can be used towards the provision of social housing.

2. **If a local authority specifies in its housing strategy that 20% of the land for residential use is to be reserved for the delivery of social, affordable, and cost rental housing, does the local authority have to take exactly 20% of the houses within the development, or can it take less than that and use the equivalent net monetary value to reduce the price of the homes acquired?**

   In negotiating any Part V agreement, section 96(3)(c) sets out a number of aspects that the local authority should consider:

   (c) In considering whether to enter into an agreement under paragraph (b) , the planning authority shall consider each of the following:

   (i) whether such an agreement will contribute effectively and efficiently to the achievement of the objectives of the housing strategy;

[1] Throughout this document, the term 'local authority' is used when the context may refer to its role as a planning authority or a housing authority.

(ii) whether such an agreement will constitute the best use of the resources available to it to ensure an adequate supply of housing and any financial implications of the agreement for its functions as a housing authority;

(iii) the need to counteract undue segregation in housing between persons of different social background in the area of the authority;

(iv) whether such an agreement is in accordance with the provisions of the development plan;

(v) the time within which housing referred to in section 94(4)(a) is likely to be provided as a consequence of the agreement.

Depending on the location specific circumstances, the local authority may decide to acquire fewer properties in the development based on one or more of the above considerations. For example, regarding affordable purchase or cost rental housing, paragraph (ii) above is a key consideration in determining whether properties can be made available at what the local authority considers to be an affordable purchase price or with an affordable rent.

3. **Where there is a 20% Part V requirement and the local authority does not require affordable housing, does 20% of the development need to be used for social housing?**

   If the development relates to a site where there is no affordable purchase or cost rental need, then negotiations would be based solely on the social housing need. In areas where the social housing need is less than 20%, the equivalent net monetary value of the 20% Part V contribution can be applied as a greater discount on the amount of housing that is required, as set out in the housing strategy. This approach can be applied to onsite housing, offsite housing or leasing arrangements as agreed.

4. **Under section 94(4), when estimating the amount of social and affordable housing that is required in the development plan area, local authorities can indicate *'different requirements for different areas within the area of the development plan'*. Under the new legislation, what is the standing of this section?**

   Prior to the 2021 amendments, the legislation was structured so that local authorities could specify in their housing strategies a percentage of up to 10% to be reserved for social and affordable housing under Part V. This specified percentage then carried through as the Part V requirement for that area. The link between the specified percentage in the housing strategy and the Part V requirement meant that local

authorities could use this percentage as a mechanism to eliminate certain areas within the development plan from a Part V requirement. For example, in areas needing regeneration due to large clusters of social housing, the local authority may have specified a low or no requirement for social and affordable housing under Part V.

Under the amendments made by the Affordable Housing Act 2021, local authorities will still identify a percentage in their housing strategies to be reserved for social and affordable housing under Part V. However, unlike in the previous legislation, this percentage will not carry through to the Part V requirement for the provision of social and affordable housing (section 96).

The new mandatory 20% Part V requirement focuses on capturing the full amount of the planning gain for the State on every applicable site, in every local authority area.

In areas where there is a low or no requirement for social and/or affordable housing, the equivalent net monetary value of the 20% Part V contribution can be applied as a greater discount on the amount of housing that is required or used towards the provision of housing offsite in an area with a greater social housing need.

5. Where it is proposed that Part V will be used for 10% social housing and 10% affordable housing, is the price to be paid for the affordable the same as the social?

The price to be paid for Part V housing onsite is set out in section 96(3)(d) of the Planning and Development Act 2000 (as amended) and this method of calculation applies to all Part V homes onsite, irrespective of whether they will be used for social or affordable housing.

Whilst it is a matter for the local authority to determine how the equivalent net monetary value is applied across the development, section 96(3)(bb) of the Planning and Development Act 2000, as recently amended under the Affordable Housing Act 2021, provides that at least half of the equivalent net monetary value should be used towards the provision of social housing.

6. Does the 10% Part V requirement under the transition arrangements relate to the date on which the application is made or the date on which the Part V agreement is entered in to?

It is our understanding that the Part V requirement is determined both by the date that the land in question was transacted, and the date that planning permission was granted. The date on which the application was made does not determine the Part V

requirement. All planning permissions granted before 3 September 2021 retain a 10% Part V requirement. The Part V requirement for planning permissions granted on or after 3 September 2021, up to the 31 July 2026, will be determined after the permission has been granted and will depend on the date that the site was acquired by the applicant. It is possible that pre-planning Part V "agreements in principle" for developments on land which was purchased before 1 September 2015 and granted planning after 3 September 2021, may need to be renegotiated to reflect the 20% requirement.

7. **Where a planning application is made by a developer 'with the consent of the owner' and where the applicant is therefore not the owner of the land, how is this application assessed in respect of the transitional arrangements?**

Section 96(3)(j) of the Planning and Development Act 2000 (as amended) provides for transitional arrangements whereby a 10% Part V requirement will continue to apply.

(j) Where—

> *(i) the permission is granted before 1 August 2021, or*
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> *(ii) the permission is granted during the period beginning on 1 August 2021 and ending on 31 July 2026 and the land to which the application for permission relates **was purchased by the applicant**, or the person on whose behalf the application is made, during the period beginning on 1 September 2015 and ending on 31 July 2021,*

the reference to "20 per cent of the land" in paragraph (a) shall be read as "10 per cent of the land" and the reference in paragraph (bb) to "at least half of the aggregate of the net monetary value" shall be read as "all of the aggregate of the net monetary value.",

It is therefore our understanding that the above 10% Part V requirement is confined to planning applications where land was purchased by the applicant in the 2015 to 2021 period and is in the ownership of the applicant at the time of the grant of planning permission.

8. **Do the transitional arrangements apply to land gifted or inherited during the specified period?**

It is our understanding that under the transition arrangements in section 96(3)(j) of the Planning and Development Act 2000 (as amended), the phrase "*was purchased*

by the applicant" is confined to where land was purchased in the 2015 to 2021 period. Our understanding is that the reason for the provision was to avoid penalising a developer who paid a price for land on the basis of a 10% Part V requirement applying to any potential residential development. As viability would likely be unaffected in the case of land gifted or inherited during this period, it seems there was no intention for such land to be included in the transitional arrangements.

9. Do new applications for planning permission on land that is unzoned, have a Part V requirement?

Our understanding of section 94(c) of the Planning and Development Act 2000 (as amended), is that Part V will now apply to all applications for residential development granted after September 3rd 2021, regardless of zoning. Exceptions exist for developments listed under section 96(13), whereby Part V does not apply. The applicant may also be eligible to apply for an exemption certificate if it meets the criteria set out in section 97(3) of the Planning and Development Act 2000 (as amended).

10. What are the eligibility criteria for a Part V exemption certificate?

Under section 97(3) of the Planning and Development Act 2000 (as amended), applicants seeking planning permission for a development consisting of the provision of **4 or fewer houses**, or for housing on **land of 0.1 hectares or less**, can apply for an exemption certificate. This threshold applies to all exemption certificates granted after 3 September 2021, regardless of when the application for an exemption was submitted. It is important to note that the applicant must apply for an exemption certificate and cannot assume that meeting the criteria in section 97(3) results in an automatic exemption from Part V.

11. If a development of 5 or more houses is granted a Part V exemption certificate before 3 September 2021, but planning has not yet been granted, is the exemption certificate still valid?

It is our understanding that where an exemption certificate was granted by the planning authority prior to 3 September 2021, that exemption certificate is valid and will still apply to the application. Section 97(3) provides that that *'where the planning*

authority grants a certificate, section 96 shall not apply to a grant of permission in respect of the development concerned.'

12. A landowner who bought land in 2017 applies for planning permission and is granted permission with a 10% Part V requirement under the transition arrangements. If they immediately sell this land with planning permission to a third party, will the new owner have a 10% Part V requirement or a 20% Part V requirement?

It is our understanding that the Part V requirement is attached to the planning permission, and therefore a 10% Part V requirement would carry over to the new owner who purchased the site with the benefit of planning permission.

13. Where an application is made after 3 September 2021 to amend an existing planning permission that has a 10% Part V requirement, how will the proposed amendments be assessed?

If the application is for an **amendment** to the existing planning permission, it is our understanding that the 10% Part V requirement for the existing planning permission would still apply.

If construction has commenced onsite, a Part V agreement may have already been signed with the local authority. If the amendments to the planning permission involved any homes which were the subject of the Part V agreement, that agreement would require amendment. Similarly, if the number of homes or density of homes was revised, the Part V agreement may require amendment.

If, however, the developer was seeking a **new** grant of planning permission on the site after 3 September 2021, and he/she was not able to demonstrate that the land was purchased between 1 September 2015 and 31 July 2021 (section 96(3)(j)), the new planning permission would have a 20% Part V requirement. The determination as to whether an application constitutes an amendment to an existing planning permission, or a new grant of planning permission should be made by the relevant planning authority.

14. What happens if the land is assembled in parcels, and parts are owned before August 1st 2021 and parts after?

Take a scenario where the grant of planning permission relates to a site, part of which was acquired in the 1 September 2015 to 31 July 2021 period, and part of which was acquired prior to 1 September 2015 or after August 1, 2021. The applicable Part V requirement will be 20%, but the developer will be entitled to a 10%

Part V requirement on the section of the site covered by the transition arrangements in section 96(3)(j). For example, if the portion acquired during the specified period accounts for 70% of the overall site, the default Part V requirement would involve a land transfer of 13% of the overall site (70% at 10% plus 30% at 20%).

15. In relation to planning permissions granted by a local authority before the 3 September 2021 but under appeal to An Bord Pleanála (on land purchased prior to 2015), if a decision to grant is made by An Bord Pleanála (the Board) after the 3 September 2021, will these sites now have a 20% Part V requirement?

Our understanding is that while a local authority may make a decision to grant planning permission, the actual grant of planning is not made until either the period for appeal to the Board expires, or, if an appeal is taken, until that appeal has been withdrawn, dismissed or a decision is made by the Board. If the Board decides on appeal to grant permission, the earliest possible date of the grant of planning is the date of the decision by the Board.

This is set out in section 34(11) of the Planning and Development Act 2000 (as amended):

"(11) (a) Where the planning authority decides under this section to grant a permission—

(i) in case no appeal is taken against the decision, it shall make the grant as soon as may be after the expiration of the period for the taking of an appeal,

(ii) in case an appeal or appeals is or are taken against the decision, it shall not make the grant unless, as regards the appeal or, as may be appropriate, each of the appeals—

(I) it is withdrawn, or

(II) it is dismissed by the Board pursuant to section 133 or 138, or

(III) in relation to it a direction is given to the authority by the Board pursuant to section 139 , and, in the case of the withdrawal or dismissal of an appeal or of all such appeals, as may be appropriate, it shall make the grant as soon as may be after such withdrawal or dismissal and, in the case of such a direction, it shall make the grant, in accordance with the direction, as soon as may be after the giving by the Board of the direction.

(b) Where the Board decides on appeal under section 37 to grant a permission, it shall make the grant as soon as may be after the decision."

Section 96(3)(j) of the Planning and Development Act 2000 (as amended) sets out two conditions whereby a 10% Part V requirement is applicable. Both conditions refer to where *"permission is granted".*

(j) Where

> *(i) the permission is granted before 1 August 2021, or*
>
> *(ii) the permission is granted during the period beginning on 1 August 2021 and ending on 31 July 2026 and the land to which the application for permission relates **was purchased by the applicant**, or the person on whose behalf the application is made, during the period beginning on 1 September 2015 and ending on 31 July 2021,*

It is therefore our understanding that if an application is referred to the Board, the earliest possible date of the grant of planning is the date on which the Board either dismisses the appeal, decides the appeal or the appeal is withdrawn.