An Ghníomhaireacht Tithíochta
The Housing Agency

Part V Resource Pack 4th Edition

Concluding Part V Agreements

May 2025

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Introduction

Part V of the Planning and Development Act 2000 (as amended) requires that where a residential development is undertaken, that an agreement be entered into with the planning authority for the provision of social, affordable and cost rental housing with certain exceptions (see section 1.0 below).

This document provides a step-by-step guide to negotiating a Part V agreement, beginning with a diagram of the key steps. More information is then provided about each of these steps.

In addition, this document includes some useful appendices including a summary of information required throughout the Part V negotiation process, an illustrative letter of compliance/non-compliance, an outline of some risks to be managed during the negotiation process and an illustrative Chief Executive's order.

Appendix 5 is a consolidated version of Part V of the Planning and Development Act (as amended) which was undertaken by the Law Reform Commission.

Appendix 6 is a copy of the 2017 Guidelines issued by the Minister for Housing, Planning, Community and Local Government under section 28 of the Planning and Development Act 2000.

Appendix 7 is a copy of Chapter 2 of the Development Guidelines for Planning Authorities 2007 on pre-application consultations.

The following document updates the previous version of the Part V Resource Pack (3rd edition) published in June 2021 and is offered as guidance to local authority personnel in the consideration of the Part V element of planning applications.

Part V is due to be replaced by Part 7 of the Planning and Development Act 2024 in the near future. This 4th edition of the Resource Pack incorporates topics which will carry forward to the new legislation. An updated version of the Resource Pack will be published following the commencement of Part 7.

What is Part V?

Part V of the Planning and Development Act 2000 (as amended) (referred to in this document as “the Act”) enables the State to capture a portion of the increase in land value resulting from a local authority grant of planning permission for housing. The land value which is captured is then used to provide social and affordable housing.

Part V requires local authorities to include a planning condition on grants of planning permission for housing (with some limited exceptions). This planning condition requires the local authority to enter into a “Part V agreement” with the applicant for planning or others who are carrying out the development.

The primary option to satisfy Part V is the transfer of land to the local authority.

The Act also sets out several alternative options to the transfer of land:

- Transfer of housing on the site granted planning permission (on-site housing)
- Transfer of housing on another site (off-site housing including second hand housing)
- Leasing of housing on-site or off-site
- Any combination of the above

The local authority pays “existing use value” for land acquired under Part V rather than market value. Existing use value is the value of the land without the benefit of planning permission and without the value of zoning or the “hope” value of obtaining planning permission. Where the local authority does not acquire land under a Part V agreement, it must achieve the equivalent value as if the agreement had been for land.

Where the agreement is for the transfer of housing, the Act specifies the price to be paid for the housing. The local authority should pay the same as if it had purchased land at existing use value and contracted an independent builder to undertake the development.

The local authority must capture 20% of the planning gain under a Part V agreement and use at least half of this towards the provision of social housing support. The remainder can be used towards affordable housing or more social housing.

In some limited circumstances, the local authority is only required to capture 10% of the planning gain and use it for social housing. These circumstances are set out in section 1.3.

Determining the Part V requirement – legislative context

The amount of land or equivalent net monetary value[1] to be achieved under Part V has changed over time.

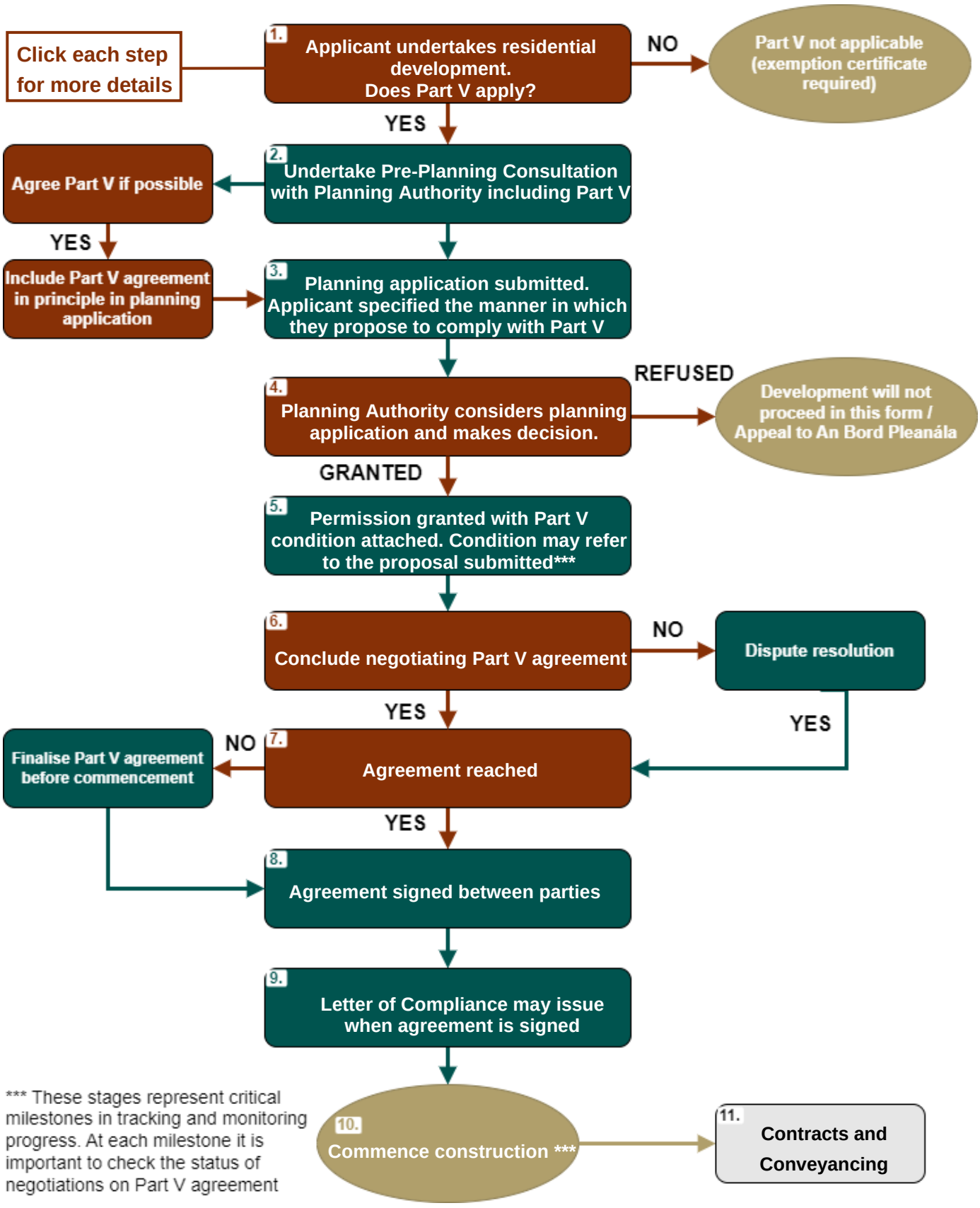
- When first introduced under the Planning and Development Act 2000, a local authority could require *up to 20%* of land or the equivalent net monetary value. The exact percentage was specified in each local authority's housing strategy. Land or homes acquired under a then Part V agreement, could be used for social housing provision or affordable purchase housing.
- Following the standing down of affordable housing delivery, the Urban Regeneration and Housing Act 2015 reduced the requirement to *up to 10%* of land or equivalent net monetary value, which could only be used for the provision of social housing.
- The Affordable Housing Act 2021 increased the requirement to 20% on all applicable grants of planning, subject to transition arrangements for those who acquired land in the period when the requirement was 10%. For developments with a 20% requirement, the provision of affordable housing under Part V agreements was restored.

The specified percentage in a local authority's housing strategy is no longer the same as the Part V requirement following the Affordable Housing Act 2021. The Affordable Housing Act 2021 amended section 96 of the Planning and Development Act 2000 (as amended), which now specifies a mandatory Part V requirement of 20% of the land or the equivalent net monetary value. This mandatory 20% Part V requirement focuses on capturing the full amount of the land or planning gain for the State on every applicable site, in every local authority area. Section 94(4)(c) of the Act requires that the local authority specify a percentage in its housing strategy of land to be reserved for social housing, affordable purchase housing and now cost rental. This percentage should serve to guide the local authority as to how many homes to acquire or lease where any of the options under section 96(3)(b) are chosen.

However, a local authority has discretion as to how much land or how many homes in a development it wishes to acquire under a Part V agreement. For example, if a local authority has a 15% requirement in its housing strategy, it would seek to acquire 15% of a development, and the equivalent net monetary value of the Part V 20% requirement can be applied as a greater discount on the amount of housing acquired. An example of how to calculate this is provided below in section 6.8.3. Where the agreed option under Part V is for the acquisition of land only, 20% of the land must be acquired.

[1] The "net monetary value" is the market value of land minus its existing use value. It is the value that the local authority would have gained had it purchased the land at existing use value under a Part V agreement. This is set out in detail in section 6.0.

Key Steps in Part V Agreements



*** These stages represent critical milestones in tracking and monitoring progress. At each milestone it is important to check the status of negotiations on Part V agreement

1.0 Applicant undertakes residential development, does Part V apply?

1.1 Exemption Certificates

Applications for planning permission for a development of 4 or fewer houses or a development of houses on land of less than 0.1 hectare can be exempted from Part V. The applicant will need to obtain an exemption certificate by applying to the local authority prior to submitting a planning application (section 97). When applying for the certificate, the applicant will have to swear a statutory declaration stating certain facts, such as the history of the ownership of the land and whether they have, or had within the previous five years, interests in land within the immediate vicinity, to allow the local authority to determine eligibility for the certificate.

A certificate is not to be granted if one has been granted to the applicant (or a person with whom the applicant is acting in concert) in the previous five years in respect of a development on the land or its immediate vicinity that is still in force. A certificate is also not to be granted if the applicant was granted permission within the previous five years to carry out a development on the land or its vicinity and the new development, together with either the previous permitted development or any development in respect of which a certificate continues in force, would bring the total number of units above 4 or the total development size above 0.1 hectares.

The purpose of this anti-avoidance provision in subsection (12) of section 97 is to prevent a developer avoiding the Part V requirement by splitting a development into separate phases each of less than 0.1 hectare or 4 or fewer houses.

It should be noted that the applicable number of houses was 9 or fewer between 1 September 2015 and 3 September 2021 when section 47 of the Affordable Housing Act 2021 was commenced. Part V can apply to developments of between 5 and 9 houses which have a 10% Part V requirement under the transition arrangements. An example of how to calculate Part V in these developments is provided in section 6.8.5 below.

1.2 Developments to which Part V does not apply

As set out in section 96(13) of Planning and Development Act 2000 (as amended), Part V does not apply to applications for permission for -

- developments consisting of the provision of houses by an approved housing body (AHB) for social housing and/or affordable housing and/or cost rental housing where the AHB is the applicant.
- the conversion of an existing building or the reconstruction of a building to create one or more homes provided that at least 50% of the external fabric is retained.
- the carrying out of works to an existing house.
- development of houses under a Part V agreement.

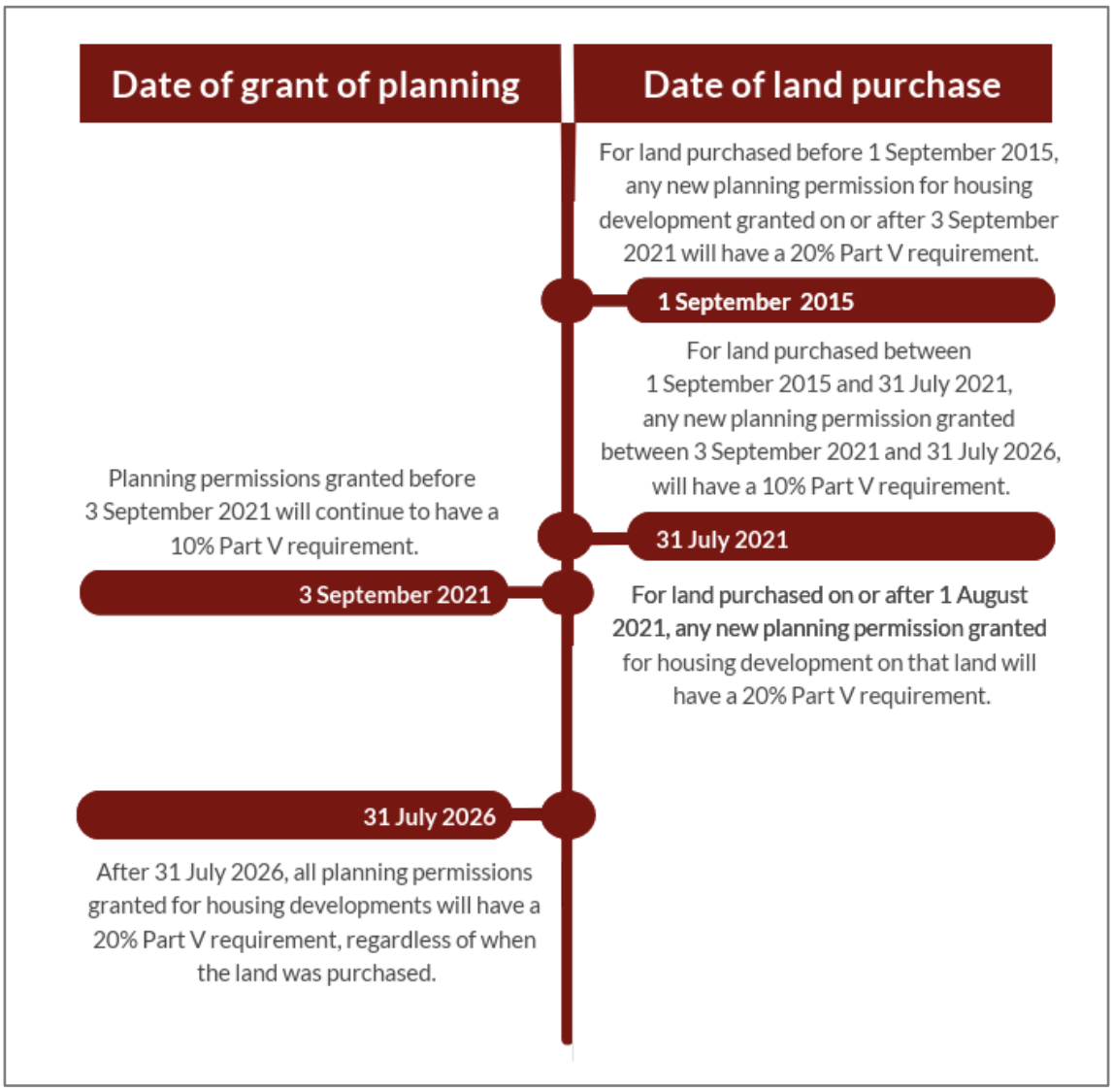
1.3 Part V requirement, date of land purchase and transition arrangements

Following amendments to Part V under the Affordable Housing Act 2021, transitional arrangements under section 96(3)(j) provide that until 31 July 2026, any land purchased between 1 September 2015 and 31 July 2021 will continue to have a 10% Part V requirement to be applied to social housing. It should be noted that 2026 deadline is approaching and may impact the Part V requirements on planning applications in the near future.

In the case of land purchased before 1 September 2015 and on or after 1 August 2021, where planning permission is granted after 3 September 2021, section 96(3) provides for the transfer of 20 % of the land or achieving 20% of the equivalent net monetary value where one of the other options are used (see section 2.1) . At least half of the transferred land or net monetary value is to be used for the provision of social housing support. A Part V planning condition should be included in all grants of planning for houses[2] the applicant has an exemption certificate or Part V does not apply under section 96(13).

[2] The Part V requirement applies to applicable developments of houses on any land that is zoned residential (either exclusively or mixed use) or is granted planning permission for houses as a material contravention of the development plan.

Figure A: Transitional Arrangements under Affordable Act 2021



1.3.1 Transition arrangements where parcels of land were purchased separately

Where the grant of planning permission relates to a site of which only a part was acquired in the September 2015 to July 2021 period, the applicable Part V requirement will be different for each portion of land. How each parcel is used within the development will be irrelevant once the application is for permission for a housing development of more than 4 houses. For example, if the portion acquired during the specified period accounts for 70% of the overall site, the land option under Part V would involve a land transfer of 13% of the overall site (70% at 10% plus 30% at 20%).

1.3.2 Inter Group Transfers

Where a site that was purchased in the period between 1 September 2015 and 31 July 2021 is transferred after 31 July 2021 to a new special purpose vehicle and the local authority is satisfied that the new owner is a wholly owned subsidiary of the owner as at 31 July 2021, the Part V requirement to be applied to permissions granted on that land before 31 July 2026 should be 10%. A wholly owned subsidiary is as defined in Section 8 of the Companies Act 2014 (as amended). Where the owner as at 31 July 2021 and the new owner are both wholly owned subsidiaries of the same company, the Part V requirement to be applied to permissions granted on that land before 31 July 2026 should be 10%.

Where a site is purchased by an individual or more than one individual in the period between 1 September 2015 and 31 July 2021 and is transferred after 31 July 2021 to a new special purpose vehicle for the purpose of securing development finance and the local authority is satisfied that the shares in the new owner are wholly owned by the individual or individuals who owned the site at 31 July 2021, the Part V requirement to be applied to permissions granted on that land before 31 July 2026 should be 10%.

It will be a matter for the new SPV to provide appropriate evidence to the local authority to satisfy the above requirements which could be by way of an auditors or solicitors certificate confirming the position.

1.3.3 Ownership of land by member or shareholder of a company

A scenario may arise where an individual purchases a piece of land in their own name and subsequently makes an application for planning permission in the name of their company. For example, Joe Bloggs purchases a piece of land, and the planning applicant is Joe Bloggs Construction Ltd. Where an individual purchased land in the period between 1 September 2015 and 31 July 2021, and an application for planning permission is made by their company between 3 September 2021 and 31 July 2026, the question arises for the local authority as to whether the transition arrangements set out in section 96(3)(j) apply.

Where the individual or individuals who purchased the site in the specified period have no connection to the company who is the applicant for planning, the transition arrangements in section 96(3)(j) do not apply and the Part V requirement should be 20%.

Where the individual or individuals who purchased the site in the specified period can prove to the satisfaction of the local authority that they were a shareholder or member of the company **on or prior to 31 July 2021**, the transition arrangements in section 96(3)(j) would apply and the Part V requirement should be 10%.

1.4 Provisions for lower or no Part V requirement in local authority development plans

Previously, local authority development plans specified areas or types of development with a lower or no Part V requirement, for example older persons accommodation, or areas with a high proportion of existing social housing. Following the restructuring of the legislation under the Affordable Housing Act 2021, these provisions no longer have effect, and the mandatory 20% Part V requirement applies. The only exemptions to this are:

(iii) where the Part V requirement is 10% where section 96(3)(j) of the Act applies as set out above.
(iii) where section 96(13) of the Act applies and Part V does not apply to the development, as set out above or,
(iii) where the applicant has applied for and received a certificate of exemption under section 97 of the Act as set out above.

Where the local authority does not require 20% of the land in an area or development for social and affordable housing, it can seek to take less land or fewer homes at a greater discount or examine off-site options in areas where there is a greater need. An example is provided in section 6.8.3 below.

2.0 Pre-planning consultation with the planning authority

A pre-planning consultation with the relevant planning authority is mandatory for residential developments of more than 10 homes.

This consultation is governed by section 247 of the Planning and Development Act 2000 (as amended). The extent of the pre-planning phase will vary depending on the:

- size and complexity of the development;
- location of the development;
- staff resources available to the local authority and the applicant; and
- whether the development is a Large Scale Residential Development (LRD).

The applicant should meet with both Planning and Housing staff. Where possible **an agreement in principle** on satisfying Part V should be reached prior to the submission of a planning application. Early engagement with the applicant will allow for discussion about the principle of the development, any relevant design considerations and to inform the applicant of the social housing requirements for the site i.e. the type of homes the local authority is interested in acquiring.

This is particularly important where a local authority is seeking homes for elderly accommodation or for people with disabilities. Engagement on the home types and design after planning is granted is more difficult as the developer will be required to adhere to the design development as specified in the grant of planning permission. Where the Part V obligation will involve an affordable purchase or cost rental component, this may also impact on the design of the homes involved.

2.1 Options to Comply with Part V

The options to comply with Part V are as follows:

Section 96(3)(a) Planning and Development Act 2000 (as amended)

- Transfer of land. This is the primary option for the applicant as emphasised by section 96(3)(g).

Section 96(3)(b) Planning and Development Act 2000 (as amended)

- Building and transfer of houses on-site.
- Transfer of houses off-site.
- Grant of a lease of houses on or off-site.

- A combination of transfer of land under section 96(3)(a) and options under section 96(3)(b).
- A combination of 2 or more of the options under section 96(3)(b).

2.2 General requirements of pre-planning consultation

The requirements in relation to pre-planning consultations are dealt with in Chapter 2 of the Department's Development Management Guidelines for Planning Authorities 2007 (Appendix 7 of this document) including:

- Section 247 consultations – statutory requirements in relation to section 247 consultations (2.5).
- Submission of details in advance of consultations (2.6).
- Pre-application meetings: who should attend? (2.7) – ideally the planning authority should be represented by joint planning and housing teams at least in the initial stage, particularly in relation to more significant developments. Detailed Part V discussions are normally conducted by staff in the housing department.
- How to structure the meeting (2.8).
- Keeping a record of what was discussed (2.9).

2.3 Pre-planning Part V - information provided by the applicant

The first step in the pre-planning consultation process relating to Part V is for applicants to supply the planning authority with information about the proposed development. The following figure provides a checklist of the pre-planning Part V information required of applicants[3] .

[3] Local Authority Guidelines for the Implementation of Part V of Planning and Development Act 2000 as amended by the Planning & Development (Amendment) Act 2002

Figure A: Checklist of Initial Information Required by Applicant

Information Required		Provided: Yes/No
A.	**Outline of proposed scheme:** • Location and area of site including site location map. • Block plan/site layout (scale 1:500) if available. • Initial estimate of the total number of homes it is proposed to construct and the proportion of different house types and sizes. • Date of land purchase to determine if transitional arrangements under section 96(3)(j) of the Act apply.	
B.	**Compliance:** • Indication of applicant's proposal to comply with Part V – land, on-site homes, off-site homes or on or off-site leasing. • Indication of house/apartment types proposed	
C.	**Land use value:** • An indication of existing land use value and any relevant critical cost issues that the applicant may wish to raise.	

2.4 Local Authority Considerations

At this point in the process the local authority will need to consider

- Is there a housing need in the area?
- What type of homes are required to fulfil that need?
- Are the home types likely to be appropriate to meet the likely need?
- Will this development incorporate affordable housing?

If the authority has no requirement for affordable housing, it can acquire more social housing or achieve a greater balancing discount on the construction cost of the properties acquired for social housing provision. If there is an area with a low requirement for social housing, the equivalent net monetary value can be applied to the amount of social

housing that is required. For example, the local authority could agree to take one social home onsite and apply 20% of the net monetary value towards that one home.

In the unlikely event of a planning permission for a housing development at a location where there is no requirement for any type of social, affordable purchase or cost rental housing, the full Part V requirement can be satisfied by a transfer of land on-site or the transfer of houses elsewhere in the local authority area. If land is transferred, the local authority can use this land for another of its functions or sell it on the open market and apply the proceeds to housing provision (section 252(5) of the Act). Further information on calculating the price to be paid for off-site housing is provided in section 6.6 below.

2.4.1 Determining the affordable housing requirement – pre-planning stage

There is no requirement to finalise the number and types of affordable homes prior to the grant of planning permission. The local authority should discuss affordable housing with the applicant at pre-planning meetings, ensuring they are aware of the types of homes required for affordable purchase and cost rental and the likely demand for affordable housing in the area. Where the local authority is considering providing affordable purchase housing under Part V, the applicant should be made aware of the direct sales process. The applicant should also be informed that a final decision on the number of affordable homes under a Part V agreement cannot be made until planning is granted and the costs of the homes can be determined more accurately.

2.4.2 Approved Housing Bodies (AHB)

Where the local authority is considering using an AHB to deliver Part V, the views of the applicant in relation to a possible partner AHB may also be obtained at this stage; although the selection of an AHB is ultimately a matter for the local authority.

The Approved Housing Bodies Regulatory Authority (AHBRA) is responsible for establishing and maintaining the register of AHBs and for registering organisations as AHBs in line with the Housing (Regulation of Approved Housing Bodies) Act 2019. The Approved Housing Bodies Register can be found at https://www.ahbregulator.ie/.

Where the local authority proposes to involve an AHB, having heard any views of the applicant on this issue, they may wish to consider whether the body in question should also be invited to the pre-planning consultation, subject to other considerations e.g. confidentiality. It is the responsibility of the local authority to agree the price for Part V homes with the applicant.

2.4.3 Target Outcomes

To avoid delays later in the process it is considered helpful at this stage to, **at a minimum, provide feedback to the applicant** offering guidance on the outline proposal from a Part V perspective.

2.5 Guidance on preparing Part V element of planning application

At planning application stage in order to facilitate the local authority's effective consideration of Part V, the following expanded checklist of initial information from the applicant, as set out in Figure B below, could be referenced. Circular housing 36 of 2015[4] provides guidance in this area, setting out what information the applicant is required to provide with the planning application and suggesting additional indicative information which may assist in negotiating a Part V agreement following any grant of planning permission. ***Figure B: Checklist of Part V initial information which may be submitted as part of planning application***

Provision of Lands Option:	Provided: Yes/No
• Location and area of land subject to planning permission (map). • Location and area of land proposed to transfer to planning authority (map). • Details of any encumbrances e.g. rights of way. • Proposals for boundary treatment of land proposed to transfer. • Details of any known site conditions and any other relevant information in relation to the land. • The date of land purchase if transitional arrangements are being sought by the applicant. Confirmation of legal status of the land ownership. • The price sought for the land on the basis of existing use value.	

[4] DHLGH Circular PL 10/2015 and Circular Housing 36/2015, Part V - Implementation of Article 22(2)(e) of the Planning and Development Regulations 2001 (as amended) – Validation of Planning Applications

Provision of Housing Option:	Provided: Yes/No

• Location and area of land subject to planning permission (map).
• Drawings and outline specification of homes to be transferred to planning authority.
• In the case of multi-unit developments, maps and drawings showing:
  ○ the property to be transferred to the owners' management company (OMC) by way of deed of transfer of common areas between the developer and the OMC, and
  ○ the property (if any) to be taken in charge by the local authority under an agreement between the local authority and the developer for taking in charge.
• Proposed number and location of Part V homes.
• Indication of the timescale for delivery of the Part V homes.
• Proposed car parking for Part V homes.
• In the case of multi-unit developments, details of the OMC of which the local authority or AHB will become a member.
• Details of the proposed or indicative service charges (including contribution to sinking fund) in multi-unit developments (building lifecycle report as required for planning application[5]) .
• Outline cost for the Part V homes (each home type).
• Basis on which land value and building/attributable development costs have been determined.	

[5] Chapter 6, Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued under Section 28 of the Planning and Development Act, 2000 (as amended) https://www.gov.ie/en/publication/2e6b1-section-28-guidelines-for-planning-authorities-design-standards-for-new-apartments-july-2023/

Provision of Housing by way of a Lease:	Provided: Yes/No
In addition to the location and specification details listed above, the following financial information should be included: • Proposed market rents of the homes. • Lease rent proposed including the methodology for discounting the rent to meet the required equivalent net monetary value. • The obligations of the local authority or AHB in relation to the OMC. The head lease may require the local authority or AHB to become a member of the OMC.	

2.5.1 Local Authority Considerations

It is recommended that the local authority Housing Department take time in the consideration of the Part V element of the planning application. It is good practice to have a referral system in place in the local authority to facilitate the Housing Department in submitting views on the overall application, to be considered by planners.

Such engagement will potentially avoid delays with the final Part V agreement and assist a more streamlined progression to site.

Local authorities could also consider if it might be appropriate to provide information publicly to planning applicants and developers in relation to the local authority's requirements for homes and the types and sizes of homes required. This information could be published on the local authority's website.

3.0 Planning application submitted

A planning application should be accompanied with proposals as to how the applicant intends to comply with Part V[6]. The details required to be submitted with the application are set out in Article 22(2)(e) of the Planning and Development Regulations 2001 to 2024, as follows:

[6] Section 96(4) of the Planning and Development Act 2000 (as amended)

(2) A planning application referred to in sub-article (1) shall be accompanied by —

(e) in the case of an application for permission for the development of houses or of houses and other development, to which section 96 of the Act applies, details as to how the applicant proposes to comply with a condition referred to in sub-section (2) of that section to which the permission, if granted, would be subject, including-

(i) details of such part or parts of the land which is subject to the application for permission or is or are specified by the Part V agreement, or houses situated on such aforementioned land or elsewhere in the planning authority's functional area proposed to be transferred to the planning authority, or details of houses situated on such aforementioned land or elsewhere in the planning authority's functional area proposed to be leased to the planning authority or details of any combination of the foregoing, and

(ii) details of the calculations and methodology for calculating values of land, site costs, normal construction and development costs and profit on those costs and other related costs such as an appropriate share of any common development works as required to comply with the provisions of Part V of the Act.

Where it is proposed to transfer land on-site (section 96(3)(a)), this should be clearly identified on an accompanying separate map. Where homes are proposed on-site or off-site (section 96(3)(b)(i, iv, iva, vii, viii)), the applicant must indicate in writing the number of homes, including types and sizes, proposed to be transferred or leased. In all instances the applicant must indicate the location within the application lands or the indicative location of homes off-site, as appropriate.[7]

If the applicant has not specified how they intend to comply with Part V, the planning application should be considered invalid, and the applicant notified accordingly. There are three broad items that need to be included in a planning application regarding a Part V proposal, how the applicant intends to discharge their Part V obligation as regards a selection of a preferred option from the options available under legislation; details in relation to the units or land to be provided; and financial aspects. Only in cases where the applicant fails to submit the required minimum detail should the planning application be invalidated.

[7] Circular PL 10/2015 and Circular Housing 36/2015, Part V - Implementation of Article 22(2)(e), Planning and Development Regulations 2001 (as amended) – Validation of Planning Applications

4.0 Planning authority considers planning application and makes decision

The planning authority will consider the application and whether Part V is applicable to the proposed development. If Part V is applicable and planning permission is granted, the planning authority will attach a condition to the planning permission requiring the applicant to enter into an agreement with the local authority to fulfil their Part V obligations on the site.

5.0 Planning permission granted with Part V condition attached

Where it is decided to grant planning permission, a condition is required under section 96 (2) and the following is intended as suggested wording:

5.1 Suggested format of planning condition

"Prior to the lodgement of a commencement notice, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority under section 96 of the Planning and Development Act 2000 (as amended).

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000 (as amended), and to comply with the requirements of the housing strategy in the City/County Development Plan and in accordance with the proper planning and sustainable development of the area."

5.2 Alternative wording of planning condition

If preferred by the planning authority, an additional clause can be added at the end of the Part V planning condition stating:

“unless the applicant has applied for and been granted an Exemption Certificate under section 97 of the Planning and Development Act 2000 (as amended) or unless the development is a development to which Part V does not apply in accordance with section 96(13).”

6.0 Conclude Part V agreement

6.1 Local authority considerations

In concluding a Part V agreement following the granting of planning permission, the planning authority shall also consider under section 96(3)(h):

- proper planning and sustainable development of the area;
- the housing strategy and the relevant Development Plan specific objectives;
- overall coherence of the development;
- the view of the applicant in relation to the impact of the agreement on the development.

The Part V agreement is a legally binding document. Its content will depend on the option agreed for compliance with Part V.

Where an alternative option other than land on-site is proposed to satisfy a Part V Agreement e.g. transfer of homes, the planning authority is obliged to consider the applicant's proposal in accordance with section 96(3)(c)[8].

In considering this the local authority is required to consider the following:

1. Whether the proposed agreement will contribute effectively and efficiently to the achievement of the objectives of the housing strategy.
2. Whether the 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.
3. The need to counteract undue segregation in housing between persons of different social background in the area of the authority.
4. Whether the agreement is in accordance with the provisions of the development plan.
5. The time within which housing referred to in section 94(4)(a) is likely to be provided as a consequence of the agreement.

It is strongly recommended that Part V is satisfied by the provision of homes on-site, wherever possible, provided it meets the objectives in the housing strategy.

[8] DHLGH Circular PL 10/2015 and Circular Housing 36/2015, Part V - Implementation of Article 22(2)(e) of the Planning and Development Regulations 2001 (as amended) – Validation of Planning Applications

6.1.1 Housing Strategy Considerations

If the authority has no requirement for affordable housing, it can achieve a greater balancing discount on the construction cost of the properties acquired for social housing provision. If there is an area with a low requirement for social housing, the equivalent net monetary value can be applied to the amount of social housing that is required. For example, the local authority could agree to take one social home onsite and apply 20% of the net monetary value towards that one home.

In the unlikely event of a planning permission for a housing development at a location where there is no requirement for any type of social, affordable purchase or cost rental housing, the full Part V requirement can be satisfied by a transfer of land onsite or the transfer of houses elsewhere in the local authority area. If land is transferred, the local authority can use this land for another of its functions or sell it on the open market and apply the proceeds to housing provision (section 96(11) of the Act).

6.1.2 Off-site option

Every effort should be made by the local authority, through engagement with the developer at the design stage of a development, to ensure that homes suitable for the local authority's needs are included in the development. It is recognised, however, that there may be very occasional cases, despite the pre-planning consultations, where none of the homes on the site are suited to the needs of the local authority. The local authority is also, as set out above, required to consider whether the agreement constitutes the best use of financial resources, and in some cases, it may be that acquiring homes in the development would not be an efficient use of resources.

There may be situations which occur, notwithstanding the pre planning permission engagement where, for example:

- the size of homes is unsuitable for the local authority, and it was not possible for the developer to provide smaller homes;
- the land or development costs are particularly high;
- there are excessive annual management fees associated with the development;
- the development is in an area where the local authority has little or no demand for housing.

In these cases the local authority must pursue one of the other available options, e.g. the acquisition of land on the development site (section 96(3)(a)) or the building or acquisition by the developer of homes elsewhere in the functional area of the local authority, and the transfer of those houses to the local authority or to persons nominated by the local authority, including an AHB (section 96(3)(b)(iv)).

While the Act does not specify this as a requirement, it is recommended that the number of houses transferred by the developer under section 96(3)(b)(iv) should be broadly equivalent to the number that would have been transferred had the local authority been

able to secure agreement for the provision of houses on the development site. In any case, whatever number of houses are transferred, the net monetary value must be achieved by the local authority.

6.2 Priority to be given to making of Part V agreement

As referred to in Section 2, the grant of permission will contain a condition requiring that the Part V agreement be entered into by the developer/other person with an interest in the land to which the development relates, prior to the lodgement of a commencement notice under the Building Control Regulations 1997. This means that the Part V agreement must be entered into before the development can lawfully commence.

It is crucial, therefore, that there is no delay by the local authority in making the Part V agreement; all requests from the developer for meetings, information etc. should be responded to promptly. The local authority should seek to obtain the required valuations as quickly as possible.

Where a Part V agreement in principle was in place prior to the granting of permission, and the grant of permission changes the proposed number of homes, the local authority should renegotiate the agreement where this is necessary.

6.3 Disputes

Section 96(8) as amended provides that where, because of a dispute, the parties are unable to reach an agreement, the applicant or any other person with an interest in the land to which the application relates, may:

(a) refer the dispute under that subsection to An Bord Pleanála **except**
(b) where the dispute relates to a matter falling within section 96(7)[9], in which case the dispute may be referred to a property arbitrator (i.e. appointed under section 2 of the Property Values (Arbitration and Appeals) Act 1960).

Matters to be referred to the property arbitrator are:

(i). where the Part V agreement is for homes on-site or off-site, the number and price of homes to be transferred under a Part V agreement
(ii). where the Part V agreement is for leasing, the number of homes and the rent payable

[9] The number and price of houses to be transferred, the number of houses and rent payable under an agreement to lease homes, compensation payable in respect of a transfer of land or the amount payable under a combination of the section 96(3) options.

(iii). where the Part V agreement is for land, the compensation payable to the owner of land;

Where a matter has been referred to An Bord Pleanála or a property arbitrator, and both sides are agreed to abide by the adjudication of the Board or the arbitrator as the case may be, it may be possible to conclude the Part V agreement on this basis, so that the development can commence.

6.4 Guidance on preparing Part V negotiation material

Figure C below sets out the information required of the applicant once the option to meet Part V requirements is agreed and final negotiations commence. This checklist is a more comprehensive version of the pre-planning checklist provided in Figure B in Section 2.3.

Figure C: Checklist of Part V information required of applicant (after grant of permission).

Provision of Lands Option:	**Provided: Yes/No**
• Location and area of land subject to planning permission (map). • Location and area of land proposed to transfer to planning authority (map). • Details of any encumbrances e.g. rights of way. • Proof of date of land purchase if transitional arrangements are being sought by the applicant. • Proposals for boundary treatment of land proposed to transfer. • Details of site investigations underway and any other relevant information in relation to the land. • Confirmation of legal basis on which it is proposed to transfer title to the local authority. • Open space and landscaping proposed. • The price agreed that the local authority will pay for the land.	
Provision of Housing Option:	**Provided: Yes/No**
• Location and area of land subject to planning permission (map).	

• Proof of date of land purchase if transitional arrangements are being sought by the applicant.
• Drawings and outline specification of homes to be transferred to planning authority.
• Number and location of Part V homes.
• Time-scale for delivery of the Part V homes.
• Design Standards – standards in relation to layout, size and design[10].
• Outline specification (size, building materials, finishes and fittings).
• Proposed car parking for Part V homes.
• Details of management/maintenance agreement (where available).
• Infrastructural services to apartments/houses.
• Cost for each apartment/house.
• Basis on which land value and building/attributable development costs have been determined.
• Price proposed that the local authority will pay for homes.
• In the case of multi-unit developments, details of the owners' management company (OMC) of which the local authority or AHB will become a member.
• Details of the proposed or indicative service charges (including contribution to Sinking Fund) in multi-unit developments.
• In the case of multi-unit developments, maps and drawings showing:
  ○ the property to be transferred to the OMC by way of deed of transfer of common areas between the developer and the OMC, and
  ○ the property (if any) to be taken in charge by the local authority under an agreement between the local authority and the developer for taking in charge.	

[10] In relation to social housing regard should be made to the Design Manual for Quality Housing.

Provision of Housing by way of a Lease:	Provided: Yes/No
In addition to the location and specification details listed above, the following financial information should be included: • Proposed market rents of the homes. • Lease rent proposed including the methodology for discounting the rent payable to meet equivalent net monetary value. • The obligations of the local authority or AHB in relation to the owners' management company (OMC). The head lease may require the local authority or AHB to become a member of the OMC.	

6.5 Land - calculation of financial compensation to be paid by the planning authority for land transferred

Where an agreement is reached under section 96(3)(a) for the transfer of land, the amount to be paid by the planning authority to the applicant for this land is the existing use value (EUV) on the date the planning permission was granted. If the land was bought or inherited by the applicant before 25 August 1999, section 96(6)(a) of the Planning and Development Act 2000 (as amended) may apply. This sets out different valuation methods, based on the price paid for the land. The existing use value of the land is calculated by reference to the date the planning permission was granted on the basis that it would have been unlawful to carry out any development on that land other than exempted development. This means the value of the land without the benefit of planning permission and without the hope value of obtaining planning permission.

Depending on the Part V requirement, the local authority may acquire 10% or 20% of the land.

For example, if a site has an existing use value (EUV) of €80,000 and the Part V requirement is 20%, the applicant transfers 20% of the site to the ownership of the local authority in return for a payment of €16,000. Part V is then satisfied for that site.

It should be noted that if the developer proposes the land option, the local authority must accept (section 96(3)(g)). However, the local authority can negotiate as to which piece of land on the site they are to purchase.

6.6 Housing – calculation of the price to be paid for housing

A critical part of the negotiation is the price to be paid by to the applicant for the transfer or lease of homes. This is set out in the 2000 Act and outlined below.

6.6.1 Transfer of homes to be constructed on-site or off-site

Figure E below provides an indicative table of costs for homes to be constructed either on-site as part of the development or off-site on other land in the functional area of the planning authority. In accordance with section 96(3)(d) the price to be paid for home under a Part V agreement is determined on the basis of:

- Site cost based on existing use value; and
- the costs, including normal construction and development costs and profit on those costs, calculated at open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works, including the appropriate share of any common development works, as agreed between the authority and the developer.

Figure E: Indicative table of costs payable by the planning authority to the developer for homes constructed on-site or off-site

	Cost Title	**€ Indicative Amount**
1.	Construction and Sitework Costs within Site (incl builder's profit)	€174,000
2.	Share of common development costs	€33,000
3.	Professional fees including legal fees	€11,000
4.	Utility connection fees	€7,000
5.	Development contributions/levies (as applicable)[11]	€0
6.	Land at existing use value	€7,000
7.	Finance costs	€17,000
8.	VAT[12]	€31,000
9.	Total cost (incl VAT)	€280,000

[11] Local authority development contribution schemes typically exempt social housing provided under a Part V agreement. Reduced development contributions may be applied to affordable housing under a Part V agreement.

[12] VAT is charged at different rates for various goods and services, therefore the VAT figure provided is indicative only.

6.6.1.1 Builder's profit and developer's profit

It should be noted that section 96(3)(d) of the Act does not provide for a developer's profit, as it refers to the cost that would have been incurred by the local authority had it retained an independent builder to undertake the works.

Builder's profit should be a reasonable profit, determined by reference to prices for work pertaining to competitive tenders for similar work current in the locality.

6.6.2 Transfer of homes already constructed off-site

Where the local authority is acquiring homes which are being built by a different developer or is acquiring second-hand homes, it is not possible to pay a price calculated in accordance with section 96(3)(d) of the 2000 Act.

Therefore, only in these limited circumstances, the local authority pays the market value of the homes acquired, minus the net monetary value which would have been achieved had the Part V agreement been for land.

6.6.3 Lease option agreement for homes on-site or off-site

The option of leasing was introduced in 2015 and currently remains as an option in the legislation. However, as long-term leasing is being phased out by end 2025 in accordance with Government policy, local authorities are required to notify and receive consent from the leasing team within the Department prior to entering into any Part V leasing agreements. This is necessary to ensure that funding is available for any commitments entered into.

Homes are leased in exchange for a rent set initially at a proportion of the Open Market Rent; which is up to 80/85% for standard leasing. Rents are reviewed every 3 years by reference to the Harmonised Index of Consumer Prices (HICP). A lease term of up to 25 years applies.

There are two options available to satisfy the Part V condition and achieve the net monetary value in the form of a reduction in the lease payment:

- Option 1 – Up-front rent-free period
- Option 2 – Discounted Rent over the term or a portion of the term of the lease (i.e. any period longer than a possible rent free period)

The number of Part V homes considered for leasing should, in general, align with the number of homes that a local authority might purchase[13]. AHBs nominated by the local authority can lease Part V homes directly from the developer.

6.7 Provision of affordable purchase and cost rental housing under Part V

Where a development has a 20% Part V requirement, it is open to the local authority to use up to half of the Part V net monetary value towards the provision of affordable purchase housing, cost rental housing or both. The 2000 Act requires that, unless the transition arrangements apply, at least half of the net monetary value captured under Part V must be used for the provision of social housing. Where the transition arrangements apply and the Part V requirement is 10%, the entire net monetary value must be used for the provision of social housing support.

6.7.1 Cost rental

Where cost rental is being considered, the local authority must calculate the rents payable in order to meet the capital cost, plus the management and maintenance in the development and compare these rents to the market rents in the local area to determine if a sufficient discount on the market rent can be achieved to make the homes attractive to potential eligible tenants.

6.7.2 Affordable purchase housing

When determining whether there is a demand for affordable purchase housing in the area, a local authority should refer to its housing strategy. In addition, where there is a demand for affordable housing, the specified percentage in the housing strategy will serve as a guide as to how much of the development is to be allocated as affordable housing.

A second, and equally important consideration to the demand for affordable housing is whether affordable housing is financially viable in the development in question. The method for calculating the price to be paid for Part V homes is set out in section 96(3)(d) and summarised in section 6.6. This method of calculation applies to housing used for the provision of social housing support, affordable purchase housing and cost rental housing.

Local authorities must examine the likely sale price of the housing in the development which can be achieved through Part V and compare it to market sale prices to determine if a sufficient discount on the market price can be achieved in order to make the homes attractive to potential eligible purchasers.

[13] See Section 3.3. of 2017 Guidelines issued by the Minister for Housing, Planning, Community and Local Government under section 28 of the Planning and Development Act 2000 (Appendix 7 of this document)

Where the Part V price alone cannot achieve a sufficient discount on the market price, the local authority must look at all options available including the option of agreeing to accept a lower number of homes and spreading the net monetary value over fewer homes to reduce the price. This is set out in example 5 in section 6.8.3 below.

6.8 Calculation of the equivalent to the "net monetary value" of land transferred

Where an agreement is reached under section 96(3)(b) for the transfer of property, or the lease referred to in section 96(3)(b)(iva), the gain to the planning authority for such transactions should be equivalent to the net monetary value that would have been gained if the agreement was for the transfer of land.

The net monetary value (NMV) is the market value (MV) of the land to be transferred less the existing use value (EUV) of that land i.e. NMV = MV – EUV.

The 'market value' of the land for the purpose of Part V is defined in section 93(1) of the 2000 Act as the open market value on the date of the grant of planning permission.

The number of Part V homes on the site should be determined by calculating the percentage of the net monetary value (NMV) achieved through the acquisition of each home. It should be emphasised that acquiring 20% of the number of homes may not achieve the equivalent of 20% of the net monetary value.

If the agreement does not achieve the equivalent of 20% of the net monetary value, the local authority should seek an additional discount on price paid to the developer for constructing the homes. The price to be paid for Part V homes is specified in the 2000 Act and set out in section 6.6 above.

Where the Part V agreement is for the acquisition of houses, the local authority must calculate the total plot area of the Part V houses. The plot area is the area of land which is sold to the purchaser and registered with the land registry, normally the footprint of the house and any front and back gardens.

The developer only sells the plot areas in the development to house buyers. The remainder of the site including roads and green spaces is generally accessible by all residents and either taken into an owners' management company or taken in charge by the local authority. Therefore, if the local authority acquires houses which sit on 20% of the plot area, this is the equivalent of acquiring 20% of the land.

Where the Part V houses occupy more or less than 20% of the plot areas, there will be an overprovision or a shortfall in the net monetary value. The balance should be achieved

through a balancing payment made by the local authority or an increased discount being given by the developer. This is set out in more detail in the examples provided below.

For apartment developments, more than one apartment can occupy the same area of land. Instead of acquiring a plot of land, those purchasing apartments acquire the floor area of the apartment. The rest of development including corridors, lifts, courtyards etc. (referred to as 'common areas') is shared between the apartment residents, and is owned and controlled on their behalf by an owners' management company, of which the apartment owners are members.

Therefore, for Part V calculations in apartment developments, floor area is used instead of plot area. Acquiring apartments which occupy 20% of the floor area is the equivalent of acquiring 20% of the land. If the Part V apartments occupy more or less than 20% of the floor area, the balance should be achieved through a balancing payment to the developer, or an increased discount being given by the developer. This is set out in more detail in example 3 below.

6.8.1 Acquisition of Part V homes in mixed developments of houses and apartments

Where the Part V agreement is for houses, the local authority must determine the plot area of each house. Part V calculations cannot be based on the floor area of houses.

Where the Part V agreement is for multistorey, separate occupation properties such as apartments or duplexes, the floor area can be used instead of the plot area.

For developments of both houses and apartments, a combination of the above approaches for houses and apartments should be used. The local authority should identify the plot area of the site for the exclusive use of the residents of the apartments. This "apartment-exclusive plot" area can be apportioned to each apartment according to its floor area. This results in a share of land being apportioned to each apartment, which can be directly compared to the plot of land apportioned to each house.

Further examples of Part V calculations are provided on the Housing Agency's website: https://www.housingagency.ie/partV

6.8.2 Example 1 – Acquisition of 20% of the houses in a development for use as social housing

A development of 80 houses on a site of 25,000 sq. m. The total area of the plots of all 80 houses is 15,000 sq. m. which is 60% of the total area of the site. The remainder of the site is occupied by roads and open space accessible to all residents. Therefore, if the local authority captures 20% of the plot area of 15,000 sq. m. in the Part V agreement, this is equivalent to capturing 20% of the total area of the site.

The site has a market value of €3,710,000 and an existing use value of €80,000.

Net monetary value (NMV) is €3,630,000 which is the difference between the market value and the existing use value of the site (€3,710,000 – €80,000). The local authority is required to realise a net monetary value of **€726,000**, that is 20% of €3,630,000.

As the combined size of all the house plots is 15,000 sq. m., for each square metre of plot that the local authority acquires at existing use value (instead of market value), it makes a gain of €242 (NMV of €3,630,000 ÷ total plot area of 15,000 sq. m.).

The local authority decides to acquire 16 houses (20% of the houses) and pays existing use value for the combined plot area of these houses which is 2,700 sq. m. Multiplying the plot area of the 16 houses by the net monetary value per sq. m. shows that the local authority realises a net monetary value of €653,400 by acquiring the 16 houses (2,700 sq. m. x €242 NMV per sq. m.).

As set out above, the local authority is required to realise a net monetary value of €726,000. Therefore, there is a shortfall of €72,600 (€726,000 – €653,400) which can be deducted from the construction and development costs due to the developer.

Were the local authority to acquire 16 houses with a combined plot area of 3,300 sq. m., the local authority would realise a net monetary value of €726,000 (3,300 sq. m. x €242 NMV per sq. m.). This exceeds the required net monetary value of €120,000; this excess should be paid to the developer in addition to construction and development costs.

As all of the houses acquired under Part V in this example are to be used for the provision of social housing support, the requirement in section 96(3)(bb) of the 2000 Act that half of the net monetary value must be used for the provision of social housing is satisfied. Further information on these provisions is set out in section 6.7 above.

6.8.3 Example 2 – Acquisition of 15% of the houses in a development for use as social and affordable housing

A local authority may have a specified percentage in its housing strategy which is less than 20%. Therefore, when agreeing to acquire homes in a development, a local authority may seek to acquire the equivalent percentage of homes, for example 15%. Alternatively, if the local authority is seeking to provide affordable purchase housing in an area where delivery costs are close to market value, it may seek to apply the net monetary value to a lesser number of homes to further reduce the price it must pay for the Part V homes.

Taking the same development as in example 1 above of 80 houses on a site of 25,000 sq. m. The total area of the plots of all 80 houses is 15,000 sq. m.

The site has a market value of €3,710,000 and an existing use value of €80,000.

Net monetary value (NMV) is €3,630,000 (€3,710,000 – €80,000). The local authority is required to realise a net monetary value of **€726,000**, that is 20% of €3,630,000.

As the combined size of all the house plots is 15,000 sq. m., for each square metre of plot that the local authority acquires at existing use value (instead of market value), it makes a gain of €242 (NMV of €3,630,000 ÷ total plot area of 15,000 sq. m.).

Rather than acquiring 16 houses (20%) as in example 1 above, the local authority decides to acquire 12 houses (15%), of which 8 will be used for the provision of social housing support and 4 for affordable purchase housing. Section 96(3)(bb) of the 2000 Act requires that half of the net monetary value must be used for the provision of social housing. Therefore, two sets of calculations are required.

Social Housing - Calculations

Firstly, the 8 houses intended for the provision of social housing support occupy a total plot area of 1,350 sq. m. Multiplying the plot area of the 8 houses by the net monetary value per sq. m. shows that the local authority realises a net monetary value of €326,700 by acquiring the 8 houses (1,350 sq. m. x €242 NMV per sq. m.).

As set out above, the local authority is required to realise a net monetary value of €726,000 and use half (€363,000) for the provision of social housing. Therefore, there is a shortfall of €36,300 (€363,000 – €326,700) which can be deducted from the construction and development costs due to the developer for the 8 houses.

Affordable Purchase Housing - Calculations

Secondly, the 4 houses intended for the provision of affordable purchase housing occupy a total plot area of 675 sq. m. Multiplying the plot area of the 4 houses by the net monetary value per sq. m. shows that the local authority realises a net monetary value of €163,350 by agreeing that 4 houses will be sold as Part V affordable purchase housing (675 sq. m. x €242 NMV per sq. m.).

As set out above, the local authority is required to realise a net monetary value of €726,000 and use half (€363,000) for the provision of social housing. The remaining €363,000 can be used for the provision of affordable housing or to provide additional social housing as determined by the local authority.

In this example, the local authority has realised €163,350 through the 4 houses allocated for affordable purchase. The local authority decides to use the additional €199,650 (€363,000 – €163,350) to further reduce to sale price of the 4 affordable purchase houses. This is deducted from the construction and development costs due to the developer for the 4 houses.

Alternatively, the local authority could decide to acquire all 12 houses for the provision of social housing support. In that case, a single calculation will suffice as all of the net

monetary value is being used for social housing support. Further information on affordable housing is provided in section 6.7 above.

6.8.4 Example 3 – Acquisition of apartments

For apartment developments, as more than one apartment can occupy the same plot area, the approach is to apportion the land costs per square metre of floor area to ensure that the local authority achieves the required net monetary value.

Take an example of a development of 44 apartments. The site has a market value of €927,500 and an existing use value of €20,000.

Net monetary value (NMV) is €907,500 (€927,500 – €20,000). The local authority is required to realise a net monetary value of **€181,500**, that is 20% of €907,500.

The 44 apartments comprise:

- 8 No. 3-bed (100 sq. m. each - total for 8 apartments 800 sq. m)
- 26 No. 2-bed (75 sq. m. each - total for 26 apartments 1,950 sq. m)
- 10 No. 1-bed (55 sq. m. each - total for 10 apartments 550 sq. m)

The total floor area of all 44 apartments is 3,300 sq. m. Therefore, for each square metre of floor area that it acquires under Part V (paying existing use value instead of market value for the land associated with each apartment), the local authority realises a net monetary value of €275 (€907,500 ÷ 3,300 sq. m.).

There are 44 apartments in the development, therefore it is not possible for the local authority to acquire exactly 20% of the number of apartments (8.8 apartments). The local authority must acquire either 8 apartments or 9 apartments.

If the local authority decides to acquire 8 no 2-bed, 75 sq. m. apartments the net floor area of those 8 apartments is 600 sq. m. The total net monetary value realised by the local authority would be €165,000 (600 sq. m. x €275). This is a shortfall (€16,500) in the net monetary value of €181,500 which should be achieved. The shortfall should be deducted from the building costs payable to the developer.

However, in the case where the local authority decides to acquire 9 no 2-bed, 75 sq. m. apartments the net floor area of those 9 apartments is 675 sq. m. The total net monetary value realised by the local authority in this instance would be €185,625 (675 sq. m. x €275). This exceeds the required net monetary value of €181,500 and in this instance the excess sum (€4,125) should be paid to the developer in addition to the building costs.

6.8.5 Example 4 – 10% Part V requirement in a development of 5 homes

Where the transition arrangements in section 96(3)(j) apply, a development will have a 10% Part V requirement. For developments of between 5 and 9 homes, 10% of the number of homes is less than one whole house or apartment.

In these developments it is open to the local authority to acquire one home under Part V for the provision of social housing. However, the sale price of that home might be higher.

Taking a development of 5 houses with a 10% Part V requirement on a site of 1,500 sq. m. The total area of the plots of all 5 houses is 1,000 sq. m.

The site has a market value of €200,000 and an existing use value of €25,000.

Net monetary value (NMV) is €175,000 (€200,000 – €25,000). The local authority is required to realise a net monetary value of **€17,500**, that is 10% of €175,000.

As the combined size of all the house plots is 1,000 sq. m., for each square metre of plot that the local authority acquires at existing use value, it makes a gain of €175 (NMV of €175,000 ÷ total plot area of 1,000 sq. m.).

The local authority decides to acquire one house which occupies a plot of 180 sq. m. Multiplying the plot area of this house by the net monetary value per sq. m. shows that the local authority realises a net monetary value of €31,500 by acquiring the house (180 sq. m. x €175 NMV per sq. m.). This exceeds the required net monetary value of €17,500; the excess of €14,000 (€17,500 – €31,500) should be paid to the developer in addition to construction and development costs which are calculated in as set out in section 6.6.

6.8.6 Example 5 – Acquisition of homes off-site

Taking the same development as in example 1 where planning permission has been granted for 80 houses. Instead of acquiring 16 houses on-site as in example 1, the local authority decides to satisfy Part V through the acquisition of 16 houses off-site in another development owned by the same developer.

The original site has a market value of €3,710,000 and an existing use value of €80,000.

The net monetary value (NMV) is €3,630,000 which is the difference between the market value and the existing use value of the site (€3,710,000 – €80,000). The local authority is required to realise a net monetary value of €726,000, that is 20% of €3,630,000.

Instead of realising this €726,000 through the acquisition of houses on-site, the local authority must achieve the equivalent through the acquisition of the off-site houses.

In order to determine the net monetary value which will be achieved through the acquisition of the off-site houses and therefore, any balancing discount or payment due, the local authority must seek valuations for the off-site development.

The off-site development has planning permission for 40 houses. The market value of the land is €2,000,000 and the existing use value is €500,000. The net monetary value is therefore €1,500,000 (€2,000,000 – €500,000).

The combined size of all the house plots in the off-site development is 8,108 sq. m., therefore for each square metre of plot that the local authority acquires at existing use value (instead of market value), it makes a gain of €185 (NMV of €1,500,000 ÷ total plot area of 8,108 sq. m.).

The local authority decides to acquire 16 houses in the off-site development (the same number as it would have acquired on the original site). It pays existing use value (the existing use value of the off-site development) for the combined plot area of these houses which is 2,700 sq. m.

Multiplying the plot area of the 16 houses by the net monetary value per sq. m. shows that the local authority realises a net monetary value of €499,400 by acquiring the 16 houses (2,700 sq. m. x €185 NMV per sq. m.).

As set out above, the local authority is required to realise a net monetary value of €726,000 on the original site. Therefore, there is a shortfall of €226,500 (€726,000 – €499,500) which can be deducted from the construction and development costs due to the developer.

7.0 Agreement reached

A Part V agreement must be reached prior to the submission of a commencement notice, in accordance with the planning permission and applicable legislation.

Should a developer proceed to lodge a commencement notice in the absence of a Part V agreement, the development would be in breach of its planning condition.

If agreement cannot be reached between both parties, dispute resolution mechanisms are provided for under the 2000 Act as set out in section 6.3 above. The local authority may consider the option of mediation prior to entering a formal dispute resolution process.

8.0 Agreement signed between parties

Formal agreement on Part V is signed between the applicant and the planning authority.

9.0 Letter of compliance in relation to Part V condition may issue by the planning authority

A letter of compliance is issued promptly by the planning authority and states that the development is in compliance with its planning condition. A specific letter is normally issued for Part V planning conditions

Compliance with planning conditions, including the Part V planning condition is required to complete the conveyancing process and sell any of the homes in the development. The purchaser's solicitors may request a copy of the Part V compliance letter.

The planning authority may issue a letter of compliance in the following circumstances:

- Where a Part V agreement is in place; or
- Where matters have been referred to the property arbitrator and there is clarity in relation to the number and types of homes to be provided under Part V, if this is the proposed option.

10.0 Commence construction

Following signing of the Part V agreement, the applicant can submit a commencement notice and begin construction. Development should be tracked, by the planning authority, in order to ensure compliance with the Part V agreement and early delivery of housing where applicable. Where the applicant does not appear to be complying with the Part V agreement, the planning authority should engage with the applicant and, in the absence of progress, may consider legal proceedings on the basis of the contract.

11.0 Contracts, conveyancing and estate management

Matters of contracts between the applicant and the planning authority should be addressed at an early stage, to avoid subsequent delays. The local authority should initiate the process of issuing conveyancing and purchase contracts as early as possible in the process. In addition, both the planning authority and the applicant should nominate a designated individual who will ensure that all the steps are in place to complete the transfer and early occupation of houses. This will ensure that households can be allocated to the designated houses as soon as possible after the transfer has completed.

One issue worth noting is that under the provisions of section 23 (1)(b) of the Registration of Title Act 1964, statutory authorities (including local authorities and the State) are

obliged to apply for first registration of all unregistered land acquired by them. The Registration of Title Act came into effect on 1st January 1967. The local authority registers the land with the Property Registration Authority of Ireland. In order to do this, they need to show good title and to have the site mapped. Where a site is not registered with the Property Registration Authority of Ireland, it is important to address the matter at an early stage to avoid subsequent delays.

As stated for in Chapter 6 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued under Section 28 of the Planning and Development Act, 2000 (as amended)[14], certainty regarding the long-term management and maintenance structures that are put in place for an apartment scheme is a critical aspect of this form of residential development. It is essential that robust legal and financial arrangements are provided to ensure that an apartment development is properly managed, with effective and appropriately resourced maintenance and operational regimes.

Where the Multi-Unit Developments Act 2011 requires that an owners' management company be established by the developer, as owners of homes in such developments, an approved housing body or a local authority will be a member of the relevant owners' management company.

Local authorities should consider the following in relation to multi-unit developments:

- Dispersal vs clustering of stock
- Finance and governance of owners' management companies
- Sinking funds provision
- Application of lease covenants and house rules

The Housing Agency's report *Social Housing in Mixed Tenure Communities* provides more information on each of these areas: https://www.housingagency.ie/publications/social-housing-mixed-tenure-communities.

[14] https://www.gov.ie/en/publication/2e6b1-section-28-guidelines-for-planning-authorities-design-standards-for-new-apartments-july-2023/

Appendix 1.
Summary of information required throughout the negotiation process

An Ghníomhaireacht Tithíochta
The Housing Agency

Appendix 1.Summary of information required throughout the negotiation process

Information Required	Provided
Preferred Initial Information Required by Applicant	
A. Outline of proposed scheme: Location and area of site including site location map. Block plan/site layout (scale 1:500). • Initial estimate of the total number of homes it is proposed to construct and the proportion of different house types and sizes. • Proof of date of land purchase if transitional arrangements are being sought by the applicant.	
B. Compliance: • Indication of applicant's proposal for complying with Part V – on-site/off-site homes; off-site homes or leasing.	
C. Land use value: • An indication of existing land use value and any critical cost issues that the applicant may wish to raise.	
Additional information required once option to meet Part V requirements is agreed	
Provision of Housing Option: • Location and area of land subject to planning permission (map). • Drawings and outline specification of homes to be transferred to planning authority. • Number and location of Part V homes. • Time-scale for delivery of Part V homes. • Design Standards – standards in relation to layout, size and design[15]. Outline specification (size, building materials, finishes and fittings).	

[15] In relation to social housing regard should be made to the Social Housing Design Guidelines: Quality Housing for Sustainable Communities 2007, Design Standards for New Apartments (DSFNA) 2018 and Design Manual for Quality Housing 2022

Information Required	Provided
• Provision of carparking spaces for Part V homes. • Details of management/maintenance agreement (where available). • Infrastructural services to apartments/houses. • Cost for each apartment/house. • Basis on which land value and building/attributable development costs have been determined. • Price agreed that the planning authority will pay for homes. • Details of the proposed or indicative Service Charges in multi-unit developments.	
Provision of Lands Option: • Location and area of land subject to planning permission (map). • Location and area of land proposed to transfer to planning authority (map). • Details of any encumbrances, e.g. rights of way. • Proposals for boundary treatment of land. • Details of site investigation undertaken and/or any other relevant information in relation to the land. • Confirmation of legal basis on which it is proposed to transfer title to the local authority. • Infrastructural services serving or to be provided for sites/land. • Open space and landscaping proposed. • The price agreed that the planning authority will pay for the land.	
Provision of Housing by way of a Lease: In addition to the location and specification details listed above, the following financial information should be included: • Proposed market rents of the homes • Lease rent proposed including the methodology for discounting the rent payable to meet equivalent net monetary value.	

Appendix 2.
Illustrative letter of compliance/non-compliance

An Ghníomhaireacht Tithíochta
The Housing Agency

Appendix 2. Illustrative letter of compliance/non-compliance

Reference No.

Addressee:

Date:

Re: Development at **[insert address]**

Register Reference No: **[insert no.]**

Dear **[insert developer's name]**,

I hereby confirm that condition no. **[insert no.]** attached to grant of permission dated **[insert date]**, Register reference No. [**insert no.]** which required **[insert planning condition]** as it relates to the above development is deemed to have been complied with.

[*To be inserted if non-compliance with Part V condition*]

Please note that condition no. **[insert no.]** attached to the Planning Permission Register Reference Number **[insert no.]** has not been complied with to date and the development is therefore unauthorised. Condition no. **[insert no.]** states:

[insert relevant condition]

Yours sincerely,

Appendix 3.
Risks to be managed during the Part V process

An Ghníomhaireacht Tithíochta
The Housing Agency

Appendix 3. Risks to be managed during the Part V process

Based on experience of negotiating Part V agreements to date, there are a number of potential risks and issues that can either unnecessarily delay the conclusion of a Part V agreement, or that affect the nature of the agreement negotiated. These are summarised as follows:

Potential Risk Factor	How it affects the process
Protracted negotiations	This is one of the key risks that can affect the outcome, leading to an unsatisfactory agreement for all parties. A number of factors can contribute to protracted negotiations: • Unrealistic figures on building costs provided by either party. • Lack of skills/competence on both sides • Changes in personnel involved in negotiation • Lack of time on length of benchmarks to progress agreements • Lack of clarity on the authority of individuals to negotiate • Not all key parties are involved in the negotiation • Length of time in determining valuations
Insufficient attention to pre-planning consultation process	The pre-planning consultation time is critical in clarifying the nature and scope of the development and how it will meet Part V requirements. It allows all parties to carefully scope what is involved in the development and what both parties require. Clarity on the development and Part V requirements at this stage will ensure a speedier transition through the different stages of the planning cycle.
Differing interpretations of the legislation	Causes uncertainty in negotiating Part V agreements.
Insufficient documentation to enable full discussion	This can lead to issues arising late in the negotiation process that could have been anticipated earlier. Appendix 1 provides a checklist of documentation required to facilitate negotiations.

Imprecise wording on the terms of the Part V agreement	See Appendix 4 – Chief Executive's Order which can be used as a template for concluding agreements
The best way to ensure that these factors are managed during the negotiation phase is to follow the best practice guidelines in negotiating Part V (see Key Steps in Part V Agreements).	

Appendix 4.
Part V agreement – illustrative Chief Executive's Order

An Ghníomhaireacht Tithíochta
The Housing Agency

Appendix 4. Part V agreement – illustrative Chief Executive's Order

Order No. **[insert no.]**

Purchase of No. **[insert no and type of houses/apartments (as relevant)]** at **[insert address]**.

Planning Permission on the above site was granted on **[insert date]**.

(Ref. **[insert planning reference no.]**) for the construction of a residential development at **[insert location]**.

The applicant entered into an agreement with **[insert Council name]** in relation to Part V of the Planning and Development Acts 2000 – 2024.

Following discussions, the developer has confirmed their acceptance of the following terms:

1. The developer**, [insert name],** will procure the sale to the Council of **[insert no.] [houses/apartments (as relevant)]** within the development.
2. These houses/apartments shall comprise of:

3 No. 1 bed dwellings as outlined below:

Level 1, Dwelling No. 1.3	@ [**insert price]**
Level 2, Dwelling No. 2.3	@ [**insert price]**
Level 3, Dwelling No. 3.3	@ [**insert price]**

5 No. 2 bed dwellings as outlined below:

Level 0, Dwelling No. G.1	@ [**insert price]**
Level 1, Dwelling No. 1.1	@ [**insert price]**
Level 1, Dwelling No. 1.2	@ [**insert price]**
Level 2, Dwelling No. 2.1	@ **[insert price]**
Level 2, Dwelling No. 2.2	@ [**insert price]**

As identified on the Scheme Map of the Development furnished to the Planning authority. All prices are inclusive of V.A.T.

3. Each house/apartment (as appropriate) shall be completed to the same standard as all other houses/apartments in the development to include a heating system, a fitted kitchen, a bathroom suite and will be ready for occupation when the sale is closed.
4. An owners' management company (OMC) will be appointed to the development. An annual service charge (including contribution to a sinking fund) will be payable in respect of each dwelling to the OMC. The sum payable in annual service charges will be reviewed on an annual basis.
5. The estimated completion date of the construction of the dwellings is **[insert date]**
6. There are **[insert no.]** car parking spaces included for the dwellings at **[insert price]** each
7. The Developer shall register each house/apartment with the Home Bond Scheme or a similar scheme acceptable to **[insert name of Council]**
8. The agreement reached in the preceding paragraphs is conditional upon: -

a.) the Developer forwarding to **[insert name of Council]** sufficient evidence of good marketable title to the site upon which the houses/apartments are to be built.

b.) the provision of the Contracts for Sale of house/apartments in accordance with the current General Conditions of Sale as issued by the Law Society of Ireland under which the legal owner would agree to convey a freehold estate or long leasehold estate to **[insert name of Council]** (and in the case where a long leasehold title is offered, that lease will be in the same for as all other leases to be granted for the Development and will also be in a form acceptable to Council i.e. in a form usually used for House/Apartment Development).

c.) the provision of Building Agreements in the then current edition as recommended by the Law Society of Ireland and the Construction Industry Federation to be entered into by **[insert name of Council]** and the Building Contractor so that Agreement would apply (save and for any price variation clause).

d.) The price for each house/apartment is inclusive of V.A.T. and the Council shall pay 10% of the price upon execution of the Contracts for Sale and Building Agreements and the balance shall be payable on the closing day as defined in the Building Agreement.

e.) Each party will be responsible for its own costs and fees in this matter.

f.) These terms are subject to the necessary approvals being obtained and to completion of the necessary legal formalities.

Designated Officer

Date

Appendix 5. Legislation

An Ghníomhaireacht Tithíochta
The Housing Agency

Appendix 5. Legislation

This Revised Act is an administrative consolidation of the *Planning and Development Act 2000*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Ministers and Secretaries and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act 2025* (1/2025), enacted 21 February 2025, and all statutory instruments up to and including the *Planning and Development (Licensing of Outdoor Events – Planning and Development Act 2000) Regulations 2025* (S.I. No. 37 of 2025), made 20 February 2025, were considered in the preparation of this Revised Act.

The most up to date consolidation can be found on the Law Reform Commission's website: https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html

Interpretation.

93.— (1) In this Part—

'cost rental housing' means housing comprising cost rental dwellings within the meaning of Part 3 of the Affordable Housing Act 2021;

'housing strategy' means a strategy included in a development plan in accordance with section 94(1);

"market value"—

(a) in relation to a house, means the price which the unencumbered fee simple of the house would fetch if sold on the open market, and

(b) in relation to land in respect of which planning permission is granted, means the price which the unencumbered fee simple of the land would have fetched if it had been sold on the open market on the date of the grant of planning permission;

"mortgage" means a loan for the purchase of a house secured by mortgage in an amount not exceeding 90 per cent of the price of the house.

(2) […][16]

(3) […]

[16] […] refers to a section of the Act that was deleted or repealed.

(4) For the avoidance of doubt, it is hereby declared that, in respect of any planning application or appeal, compliance with the housing strategy and any related objective in the development plan shall be a consideration material to the proper planning and sustainable development of the area.

Housing strategies.

94.— (1) (*a*) Each planning authority shall include in any development plan it makes in accordance with *section 12* a strategy for the purpose of ensuring that the proper planning and sustainable development of the area of the development plan provides for the housing of the existing and future population of the area in the manner set out in the strategy.

(b) ***(i)*** Subject to *subparagraph (ii)*, any development plan made by a planning authority after the commencement of this section shall include a housing strategy in respect of the area of the development plan.

(ii) Where before the commencement of this section a planning authority has given notice under section 21A(2) (inserted by the Act of 1976) of the Act of 1963 of a proposed amendment of a draft development plan, it may proceed in accordance with *section 266* without complying with *subparagraph (i)*, but where a development plan is so made, the planning authority shall take such actions as are necessary to ensure that, as soon as possible and in any event within a period of 9 months from the commencement of this section, a housing strategy is prepared in respect of the area of the development plan and the procedures under *section 13* are commenced to vary the development plan in order to insert the strategy in the plan and to make such other changes as are necessary arising from the insertion of the strategy in the plan pursuant to this Part.

(c) A planning authority shall take such actions as are necessary to ensure that, as soon as possible and in any event within a period of 9 months from the commencement of this section, a housing strategy is prepared in respect of the area of the development plan and the procedures under *section 13* are commenced to vary the development plan in order to insert the strategy in the plan and to make such other changes as are necessary arising from the insertion of the strategy in the plan pursuant to this Part.

(d) A housing strategy shall relate to the period of the development plan or, in the case of a strategy prepared under *paragraph (b)(ii)* or *paragraph (c)*, to the remaining period of the existing development plan.

(e) A housing strategy under this section may, or pursuant to the direction of the Minister shall, be prepared jointly by 2 or more planning authorities in respect of the combined area of their development plans and such a joint strategy shall be included in any development plan that relates to the whole or any part of the area covered by the strategy and the provisions of this Part shall apply accordingly.

(2) In preparing a housing strategy, a planning authority shall —

(a) have regard to the most recent summary of social housing assessments prepared under section 21 (a) of the Housing (Miscellaneous Provisions) Act 2009 that relate to the area of the development plan,

(b) consult with any body standing approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992 in its functional area, and

(c) have regard to relevant policies or objectives for the time being of the Government or any Minister of the Government that relate to housing and, in particular, social integration in the provision of housing services.

(3) A housing strategy shall take into account—

(a) the existing need and the likely future need for housing to which *subsection (4)(a)* applies,

(b) the need to ensure that housing is available for persons who have different levels of income,

(c) the need to ensure that a mixture of house types and sizes is developed to reasonably match the requirements of the different categories of households, as may be determined by the planning authority, and including the special requirements of elderly persons and persons with disabilities, and

(d) the need to counteract undue segregation in housing between persons of different social backgrounds.

(e) the existing need and the likely future need for housing, in particular houses and duplexes, for purchase by intending owner-occupiers.

(4) (a) A housing strategy shall include an estimate of the amount of—

(i). housing for the purposes of the provision of social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009, and

(ii). housing for eligible applicants within the meaning of Part 2 of the Affordable Housing Act 2021, and,

(iii). cost rental housing,

required in the area of the development plan during the period of the development plan and the estimate may state the different requirements for different areas within the area of the development plan.

(b) […]

(c) Subject to paragraph (d), a housing strategy shall provide that as a general policy a specified percentage, not being more than 20 per cent, of—

(i) the land zoned for residential use, or for a mixture of residential and other uses, and

(ii) any land which is not zoned for residential use, or for a mixture of residential and other uses, but in respect of which permission for the development of houses is granted,

shall be reserved under this Part for the provision of housing for the purposes of one or more of subparagraphs (i), (ii) and (iii) of paragraph (a).

(d) Paragraph (c) shall not operate to prevent any person (including a local authority) from using more than 20 per cent of land in respect of which permission for the development of houses is granted for the provision of housing to which paragraph (a) applies.",

(5) (a) When making an estimate under *subsection (4)(a)(ii)*, the planning authority shall have regard to the following:

(i) the supply of and demand for houses generally, or houses of a particular class or classes, in the whole or part of the area of the development plan;

(ii) the price of houses generally, or houses of a particular class or classes, in the whole or part of the area of the development plan;

(iii) the income of persons generally or of a particular class or classes of person who require houses in the area of the development plan;

(iv) the rates of interest on mortgages for house purchase;

(v) the relationship between the price of housing under *subparagraph (ii)*, incomes under *subparagraph (iii)* and rates of interest under *subparagraph (iv)* for the purpose of establishing the affordability of houses in the area of the development plan;

(vi) such other matters as the planning authority considers appropriate or as may be prescribed for the purposes of this subsection.

(b) Regulations made for the purposes of this subsection shall not affect any housing strategy or the objectives of any development plan made before those regulations come into operation.

(6) (a) When making an estimate under subsection (4)(a)(iii), the planning authority shall have regard to the following:

(i). the supply of and demand for houses for rent in the whole or part of the area of the development plan;

(ii). the cost of rents applicable to houses generally, or to houses of a particular class or classes, in the whole or part of the area of the development plan;

(iii). the income of persons generally, or of a particular class or classes of person, who require houses for rent in the area of the development plan;

(iv). the relationship between the cost of rents referred to in subparagraph (ii) and incomes referred to in subparagraph (iii) for the purpose of establishing the affordability of housing for rent in the area of the development plan;

(v). such other matters as the planning authority considers appropriate or as may be prescribed for the purposes of this subsection. (b) Regulations made for the purposes of this subsection shall not affect any housing strategy or the objectives of any development plan made before those regulations come into operation.

(7) Where on the date on which this subsection comes into operation a development plan includes a housing strategy—

(a) the chief executive of the planning authority shall, for the purpose of the performance by a planning authority of its functions under this Part, make an estimate of the amount of housing referred to in subparagraphs (ii) and (iii) of subsection (4)(a) required in the area of the development plan during the period of the development plan,

(b) such estimate may state the different requirements for housing for different areas within the area of the development plan, and

(c) such estimate shall be deemed to be included in the housing strategy concerned.

(8) Where on the date on which this subsection comes into operation a development plan includes a housing strategy—

(a) the chief executive of the planning authority shall, for the purpose of the performance by a planning authority of its functions under this Part, make an estimate of the amount of housing referred to in subsection (3)(e) required in the area of the development plan during the period of the development plan,

(b) such estimate may state the different requirements for housing for different areas within the area of the development plan, and

(c) such estimate shall be deemed to be included in the housing strategy concerned.

Housing strategies and development plans.

95.— (1) (a) In conjunction with the inclusion of the housing strategy in its development plan, a planning authority shall, having regard to the overall strategy for the proper planning and sustainable development of the area of the development plan referred to in *section 10,* ensure that sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses, to meet the requirements of the housing strategy and to ensure that a scarcity of such land does not occur at any time during the period of the development plan.

(b) A planning authority shall include objectives in the development plan in order to secure the implementation of the housing strategy, in particular, any of the matters referred to in *section 94(3),* including objectives requiring that a specified percentage of land zoned solely for residential use, or for a mixture of residential and other uses, be made available for the provision of housing referred to in *section 94*(3)(e) and *section 94(4)(a).*

(c) Specific objectives as referred to in *paragraph (b)* may be indicated in respect of each area zoned for residential use, or for a mixture of residential and other uses, and, where required by local circumstances relating to the amount of housing required as estimated in the housing strategy under *section 94(4)(a),* different specific objectives may be indicated in respect of different areas, subject to the percentage referred to in *section 94(4)(c)* not being exceeded.

(d) In order to counteract undue segregation in housing between persons of different social backgrounds, the planning authority may indicate in respect of

any particular area referred to in *paragraph (c)* that there is no requirement for housing referred to in *section 94(4)(a)* in respect of that area, or that a lower percentage than that specified in the housing strategy may instead be required.

(2) Nothing in subsection (1) or section 96 shall prevent any land being developed exclusively for housing referred to in section 94(4)(a)(i), (ii) or (iii).

(3) (a) The report of the chief executive under *section 15(2)* shall include a review of the progress achieved in implementing the housing strategy and, where the report indicates that new or revised housing needs have been identified, the chief executive may recommend that the housing strategy be adjusted and the development plan be varied accordingly.

(b) The chief executive of a planning authority shall, where he or she considers that there has been a change in the housing market, or in the regulations made by the Minister under *section 100,* that significantly affects the housing strategy, give a report on the matter to the members of the authority and, where he or she considers it necessary, the chief executive may recommend that the housing strategy be adjusted and the development plan be varied accordingly.

Provision of Social and Affordable Housing etc.

96. — (1) Subject to *subsection (13)* and *section 97,* the provisions of this section shall apply to an application for permission for the development of houses on land or where an application relates to a mixture of developments, to that part of the application which relates to the development of houses on such land, in addition to the provisions of *section 34* and, where applicable, Part 9 of the Land Development Agency Act 2021.

(2) A planning authority, or the Board on appeal, shall require as a condition of a grant of permission that the applicant, or any other person with an interest in the land to which the application relates, prior to the lodgement of a commencement notice within the meaning of Part II of the Building Control Regulations 1997, enter into an agreement under this section with the planning authority, providing, in accordance with this section, for the matters referred to in *paragraph (a)* or *(b)* of *subsection (3)*.

(3) (a) Subject to paragraphs (b) and (j), an agreement under this section shall provide for the transfer to the planning authority of the ownership of 20 per cent of the land that is subject to the application for permission for the provision of housing referred to in section 94(4)(a)

(b) Instead of the transfer of land referred to in paragraph (a) and subject to paragraph (c*)* and the other provisions of this section, an agreement under this section may provide for —

(i) the building and transfer, on completion, to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part, of houses on the land which is subject to the application for permission of such number and description as may be specified in the agreement,

(ii) […]

(iii) […]

(iv) the transfer to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part, of houses on any other land within the functional area of the planning authority of such number and description as may be specified in the agreement,

(iva) the grant to the planning authority or persons nominated by the authority in accordance with this Part, of a lease under the Housing Acts 1966 to 2014 of houses on the land, which is subject to the application for permission, or on any other land within the functional area of the planning authority, of such number and description as may be specified in the agreement,

(v) […]

(vi) […]

(vii) a combination of a transfer of land referred to in *paragraph (a)* (but involving a lesser amount of such land than if the agreement solely provided for a transfer under that paragraph and the doing of one or more of the things referred to in the preceding subparagraphs,

(viii) a combination of the doing of 2 or more of the things referred to in *subparagraphs (i)* to *(iva)*

but, subject, in every case, to the provision that is made under this paragraph resulting in the aggregate of the net monetary value of the property transferred, or the reduction in rent payable over the term of a lease referred to in sub*paragraph (iva)* (excluding any reduction for maintenance, management and void periods specified in such lease), by virtue of the agreement being equivalent to the net monetary value, that is to say, the open market value less the existing use value, of the land that the planning authority would receive if the agreement solely provided for a transfer of land under *paragraph (a).*

(bb) Where property is transferred to a planning authority under paragraph (a) or (b) or there is a reduction in rent payable over the term of a lease referred to in paragraph (b)(iva) (excluding any reduction for maintenance, management and void periods specified in such lease), the planning authority shall use at least half of the aggregate of the net monetary value of that property and of any reduction in rent calculated in accordance with paragraph (b) for the provision of housing referred to in section 94(4)(a)(i).

(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;

(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.

(d) Where houses are to be transferred to the planning authority or persons nominated by the authority in accordance with an agreement under *paragraph (b)*, the price of such houses shall be determined on the basis of —

(i). the site cost of the houses (calculated in accordance with *subsection (6),*) and

(ii). the costs, including normal construction and development costs and profit on those costs, calculated at open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works, including the appropriate share of any common development works, as agreed between the authority and the developer.

(e) Where an agreement under this section provides for the transfer of land or houses, the houses, or the land, whether in one or more parts, shall be identified in the agreement.

(f) In so far as it is known at the time of the agreement, the planning authority shall indicate to the applicant its intention in relation to the provision of housing,

including a description of the proposed houses, on the land to be transferred or to be the subject of a lease, in accordance with paragraph (a) or (b).

(g) Nothing in this subsection shall be construed as requiring the applicant or any other person (other than the planning authority) to enter into an agreement under paragraph (b) instead of an agreement under paragraph (a).

(h) For the purposes of an agreement under this subsection, the planning authority shall consider —

(i). the proper planning and sustainable development of the area to which the application relates,

(ii). the housing strategy and the specific objectives of the development plan which relate to the implementation of the strategy,

(iii). the need to ensure the overall coherence of the development to which the application relates, where appropriate, and

(iv). the views of the applicant in relation to the impact of the agreement on the development.

(i) Government guidelines on public procurement shall not apply to an agreement made under *paragraph (a)* or *(b)* except in the case of an agreement which is subject to the requirements of Council Directive No. 93/37/EEC [1] on the co-ordination of procedures relating to the award of Public Works Contracts and any directive amending or replacing that directive.

(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,

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.

(4) An applicant for permission shall, when making an application to which this section applies, specify the manner in which he or she would propose to comply with a condition to which *subsection (2)* relates, were the planning authority to attach such a condition to any permission granted on foot of such application, and where the

planning authority grants permission to the applicant subject to any such condition it shall have regard to any proposals so specified.

(5) In the case of a dispute in relation to any matter which may be the subject of an agreement under this section, other than a dispute relating to a matter that falls within *subsection (7)*, the matter may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

(6) Where ownership of land is transferred to a planning authority pursuant to *subsection (3),* the planning authority shall, by way of compensation, pay to the owner of the land a sum equal to —

(a) (i) in the case of —

(I) land purchased by the applicant before 25 August 1999, or

(II) land purchased by the applicant pursuant to a legally enforceable agreement entered into before that date or in exercise of an option in writing to purchase the land granted or acquired before that date,

the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon (including, in circumstances where there is a mortgage on the land, interest paid in respect of the mortgage) as may be determined by the property arbitrator,

(ii) in the case of land the ownership of which was acquired by the applicant by way of a gift or inheritance taken (within the meaning of the Capital Acquisitions Tax Act, 1976) before 25 August 1999, a sum equal to the market value of the land on the valuation date (within the meaning of that Act) estimated in accordance with section 15 of that Act,

(iii) in the case of —

(I) land purchased before 25 August 1999, or

(II) land purchased pursuant to a legally enforceable agreement to purchase the land entered into before that date, or in exercise of an option, in writing, to purchase the land granted or acquired before that date,

(where the applicant for permission is a mortgagee in possession of the land) the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon calculated from that date (including any interest accruing and not paid in respect of the mortgage) as may be determined by the property arbitrator,

or

(b) the value of the land calculated by reference to its existing use on the date on which the permission referred to in *subsection (2)* is granted on the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development,

whichever is the greater.

(7) (a) Subject to *paragraph (b)*, a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act, 1960, shall (in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919), in default of agreement, fix the following where appropriate:

(i) the number and price of houses to be transferred under *subsection (3)(b)(i), (iv), (vii)* or *(viii)* ;

(ia) in the case of an agreement referred to in *subsection (3)(b)(iva),* the number of houses and the rent payable under such an agreement;

(ii) […]

(iii) the compensation payable under *subsection (6)* by a planning authority to the owner of land;

(iv) the payment of an amount to the planning authority under *subsection (3)(b)(vi), (vii)* or *(viii)* ; and

(v) the allowance to be made under *section 99(3)(d)(i).*

(b) For the purposes of *paragraph (a)*, section 2(2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall not apply and the value of the land shall be calculated on the assumption that it was at that time and would remain unlawful to carry out any development in relation to the land other than exempted development.

(c) *Section 187* shall apply to compensation payable under *subsection (6).*

(8) Where it is a condition of the grant of permission that an agreement be entered into in accordance with *subsection (2)* and, because of a dispute in respect of any matter relating to the terms of such an agreement, the parties are unable to reach an agreement , the planning authority, the applicant, or any other person with an interest in the land to which the application relates may —

(a) if the dispute relates to a matter falling within *subsection (5),* refer the dispute under that subsection to the Board, or

(b) if the dispute relates to a matter falling within *subsection (7),* refer the dispute under that subsection to the property arbitrator,

and the Board or the property arbitrator, as may be appropriate, shall determine the matter as soon as practicable.

(9) (a) Where ownership of land is transferred to a planning authority in accordance with *subsection (3),* the authority may —

(i) provide, or arrange for the provision on the land of, housing of the type referred to in *section 94(4)(a),*

(ii) make land available to persons eligible for social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009 or eligible applicants within the meaning of Part 2 of the Affordable Housing Act 2021 for the development of houses by them for their own occupation, or

(iii) make land available to a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 , for the provision on the land of housing of the type referred to in *section 94(4)(a).*

(b) Pending the provision of houses or sites in accordance with *paragraph (a)(i)* or the making available of land or sites in accordance with *paragraph (a)(ii)* or *(iii),* the planning authority shall maintain the land or sites in a manner which does not detract, and is not likely to detract, to a material degree from the amenity, character or appearance of land or houses in the neighbourhood of the land or sites.

(10) (a) Where a house is transferred to a planning authority or its nominees under *subsection (3)(b),* it shall be used for the housing of persons eligible under regulations under section 32(3) of the Affordable Housing Act 2021 to be tenants of cost rental dwellings, persons eligible for social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009 or eligible applicants within the meaning of Part 2 of the Affordable Housing Act 2021

(b) A nominee of a planning authority may be a person eligible for social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009, an eligible applicant within the meaning of Part 2 of the Affordable Housing Act 2021 or a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992 for the provision of housing of the type referred to in section 94(4)(a).

(10A) A dwelling that is the subject of an agreement referred to in section 75 of the Land Development Agency Act 2021 shall not be reckoned in determining whether or not the condition imposed by this section has been complied with.

(11) Notwithstanding any provision of this or any other enactment, if a planning authority becomes satisfied that land, a site or a house transferred to it under *subsection (3)* is no longer required for the purposes specified in *subsection (9)* or *(10),* it may use the land, site or house for another purpose connected with its functions or sell it for the best price reasonably obtainable and, in either case, it shall pay an amount equal to the market value of the land, site or house or the proceeds of the sale, as the case may be, into the separate account referred to in *subsection (12).*

(12) Any amount referred to in *subsection (11)* and any amount paid to a planning authority in accordance with *subsection (3)(b)(vi), (vii)* or *(viii)* shall be accounted for in a separate account and shall only be applied as capital for its functions in relation to the provision of housing under the Housing Acts 1966 to 2009.

(13) This section shall not apply to applications for permission for —

(a) development consisting of the provision of cost rental housing or houses by a body standing approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 , for the provision of housing required for households assessed under section 20 of the Housing (Miscellaneous Provisions) Act 2009 as being qualified for social housing support, where such houses are to be made available for letting or sale,

(b) the conversion of an existing building or the reconstruction of a building to create one or more dwellings, provided that 50 per cent or more of the existing external fabric of the building is retained,

(c) the carrying out of works to an existing house, or

(d) development of houses pursuant to an agreement under this section.

(14) A planning authority may, for the purposes of an agreement under this section, agree to sell, lease or exchange any land within its ownership to the applicant for permission, in accordance with *section 211.*

(15) In this section, ‘ owner ’ means —

(a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose (whether in possession or reversion) of the fee simple of the land, and

(b) a person who, under a lease or agreement the unexpired term of which exceeds 5 years, holds or is entitled to the rents or profits of the land.

Restoration of normal limit of duration for certain permissions.

96A. — Sections 40 to 42 shall apply to permissions granted under Part IV of the Act of 1963 or under Part III of this Act pursuant to an application made after 25 August 1999 and to which this Part would have applied if the application for permission had been made after the inclusion of a housing strategy in the development plan under section 94(1).

Levy to be paid in consideration of restoration effected by *section 96A.*

96B. — (1) In this section —

‘ house ’ means —

(a) a building or part of a building which has been built for use as a dwelling, and

(b) in the case of a block of apartments or other building or part of a building comprising 2 or more dwellings, each of those dwellings;

‘ market value ’, in relation to a house, means the price which the house might reasonably be expected to fetch on a sale in the open market;

‘ relevant house ’ means a house, permission for which would have ceased to have effect or expired but for section 4 of the Planning and Development (Amendment) Act2002.

(2) There shall be deemed to be attached to a permission referred to in *section 96A* a condition providing that there shall, in accordance with *subsections (3)* to *(5),* be paid to the planning authority an amount in respect of —

(a) unless *paragraph (b)* applies as respects the particular house, the first disposal of each relevant house built on foot of that permission,

(b) if, as respects a particular relevant house —

(i) it is built on foot of that permission by a person for his or her own occupation, or

(ii) it is built on foot of that permission for a person (‘ the first-mentioned person ’) by another for the first-mentioned person ’ s occupation and that other person is not the person from whom the first-mentioned person acquires his or her interest in the land on which the house is built,

the completion of the building of that relevant house on foot of that permission.

(3) In *subsection (2)* ‘ first disposal ’, in relation to a relevant house, means whichever of the following first occurs after the house is built —

(a) the sale, at arm’ s length, of the house (whether the agreement for that sale is entered into before or after the building of the house is completed),

(b) the granting of a tenancy or lease in respect of the house for the purpose of the grantee of the tenancy or lease occupying the house, or

(c) the sale, otherwise than at arm' s length, of the house (whether the agreement for that sale is entered into before or after the building of the house is completed) or the transfer of the beneficial interest in the house.

(4) The amount of the payment referred to in *subsection (2)* shall be —

(a) where the disposal of the house concerned falls within *subsection (3)(a)* —

(i) if the consideration paid to the vendor by the purchaser equals or exceeds € 270,000, an amount equal to 1 per cent of the consideration so paid,

(ii) if the consideration paid to the vendor by the purchaser is less than € 270,000, an amount equal to 0.5 per cent of the consideration so paid,

(b) where either —

(i) the disposal of the house concerned falls within *subsection (3)(b)* or *(c),* or

(ii) *subsection (2)(b)* applies as respects the house concerned,

an amount equal to —

(I) if the market value of the house at the time of the disposal or upon the completion of its building, equals or exceeds €270,000, 1 per cent of the market value of the house at the time of that disposal or upon that completion,

(II) if the market value of the house at the time of the disposal or upon such completion is less than € 270,000, 0.5 per cent of the market value of the house at the time of that disposal or upon such completion.

(5) The payment referred to in *subsection (2)* shall be made at such time as the planning authority specifies (and the time that is so specified may be before the date on which the disposal concerned of the relevant house is effected).

(6) Any amount paid to a planning authority in accordance with this section shall be accounted for in a separate account and shall only be applied as capital for its functions under this Part or by a housing authority for its functions in relation to the provision of housing under the Housing Acts, 1966 to 2002.

(7) (a) The planning authority shall issue, in respect of the payment to it of an amount (being the amount required to be paid under this section in a particular case), a receipt, in the prescribed form, to the payer stating that the liability for payment of that amount in the case concerned has been discharged.

(b) A document purporting to be a receipt issued under this subsection by the planning authority shall be *prima facie* evidence that the liability for the payment of the amount to which it relates has been discharged.

(8) Any of the following —

(a) a provision of a contract of sale of a house,

(b) a provision of a contract for the building for a person of a house for his or her occupation,

(c) a covenant or other provision of a conveyance of an interest in a house,

(d) a covenant or other provision of a lease or tenancy agreement in respect of a house,

(e) a provision of any other agreement (whether oral or in writing),

which purports to require the purchaser, the person referred to in *paragraph (b),* the grantee of the interest or the grantee of the lease or tenancy, as the case may be, to pay the amount referred to in *subsection (2)* or to indemnify another in respect of that other's paying or liability to pay that amount shall be void.

(9) Any amount paid by the purchaser, person referred to in *subsection (8)(b)* or grantee of an interest or a lease or tenancy, pursuant to a provision or covenant referred to in *subsection (8),* may be recovered by him or her from the person to whom it is paid as a simple contract debt in any court of competent jurisdiction.

(10) This section shall not apply to permissions for development consisting of the provision of 4 or less houses, or for housing on land of 0.1 hectares or less.

(11) For the avoidance of doubt, in this section ' sale ', in relation to a house, includes any transaction or series of transactions whereby the vesting by the builder in another person of the interest in the land on which the house is built by the builder is effected separately from the conclusion of the arrangements under which the house is built for that other person by the builder.

Development to which section 96 shall not apply.

97.—(1) In this section—

"applicant" includes a person on whose behalf a person applies for a certificate;

"the court" other than in *subsections (19)* and *(21)*, means the Circuit Court for the circuit in which all or part of the development, to which the application under *subsection (3)* relates, is situated.

(2) For the purposes of this section—

(a) 2 or more persons shall be deemed to be acting in concert if, pursuant to an agreement, arrangement or understanding, one of them makes an application under *subsection (3)* or causes such an application to be made, and

(b) land in the immediate vicinity of other land shall be deemed in any particular case not to include land that is more than 400 metres from the land second-mentioned in this subsection.

(3) A person may, before applying for permission in respect of a development—

(a) consisting of the provision of 4 or fewer houses, or

(b) for housing on land of 0.1 hectares or less,

apply to the planning authority concerned for a certificate stating that *section 96* shall not apply to a grant of permission in respect of the development concerned (in this section referred to as a "certificate"), and accordingly, where the planning authority grants a certificate, *section 96* shall not apply to a grant of permission in respect of the development concerned.

(4) Subject to—

(a) *subsections (6)* and *(12)*, and

(b) compliance by the applicant for a certificate with *subsection (8)*,

a planning authority to which an application has been made under and in accordance with this section may grant a certificate to the applicant.

(5) An application for a certificate shall be accompanied by a statutory declaration made by the applicant—

(a) giving, in respect of the period of 5 years preceding the application, such particulars of the legal and beneficial ownership of the land, on which it is proposed to carry out the development to which the application relates, as are within the applicant's knowledge or procurement,

(b) identifying any persons with whom the applicant is acting in concert,

(c) giving particulars of—

(i) any interest that the applicant has, or had at any time during the said period, in any land in the immediate vicinity of the land on which it is proposed to carry out such development, and

(ii) any interest that any person with whom the applicant is acting in concert has, or had at any time during the said period, in any land in the said immediate vicinity, of which the applicant has knowledge,

(d) stating that the applicant is not aware of any facts or circumstances that would constitute grounds under subsection (12) for the refusal by the planning authority to grant a certificate,

(e) giving such other information as may be prescribed.

(6) (a) A planning authority may require an applicant for a certificate to provide it with such further information or documentation as is reasonably necessary to enable it to perform its functions under this section.

(b) Where an applicant refuses to comply with a requirement under *paragraph (a)*, or fails, within a period of 8 weeks from the date of the making of the requirement, to so comply, the planning authority concerned shall refuse to grant the applicant a certificate.

(7) A planning authority may, for the purpose of performing its functions under this section, make such further inquiries as it considers appropriate.

(8) It shall be the duty of the applicant for a certificate, at all times, to provide the planning authority concerned with such information as it may reasonably require to enable it to perform its functions under this section.

(9) The Minister may make regulations in relation to the making of an application under this section.

(10) Where a planning authority fails within the period of 4 weeks from—

(a) the making of an application to it under this section, or

(b) (in the case of a requirement under *subsection (6)*) the date of receipt by it of any information or documentation to which the requirement relates,

to grant, or refuse to grant a certificate, the planning authority shall on the expiry of that period be deemed to have granted a certificate to the applicant concerned.

(11) Particulars of a certificate granted under this section shall be entered on the register.

(12) A planning authority shall not grant a certificate in relation to a development if the applicant for such certificate, or any person with whom the applicant is acting in concert—

(a) has been granted, not earlier than 5 years before the date of the application, a certificate in respect of a development, on the land on which it is proposed to carry out the first-mentioned development or land in its immediate vicinity and the certificate at the time of the application remains in force, or

(b) has carried out, or has been granted permission to carry out, a development referred to in *subsection (3)*, not earlier than—

(i) 5 years before the date of the application, and

(ii) one year after the coming into operation of this section,

in respect of the land on which it is proposed to carry out the first-mentioned development, or land in its immediate vicinity, unless—

(I) the aggregate of any development to which *paragraph (a)* or *(b)* relates and the first-mentioned development would not, if carried out, exceed 4 houses, or

(II) (in circumstances where the said aggregate would exceed 4 houses) the aggregate of the land on which any development to which *paragraph (a)* or *(b)* relates, and the land on which it is proposed to carry out the first-mentioned development, does not exceed 0.1 hectares.

(13) Where a planning authority refuses to grant a certificate, it shall by notice in writing inform the applicant of the reasons for its so refusing.

(14) (a) Where a planning authority to which an application has been made under *subsection (3)* refuses to grant a certificate to the applicant, he or she may, not later than 3 weeks from the date on which the applicant receives notification of the refusal by the planning authority to grant the certificate, or such later date as may be permitted by the court, appeal to the court for an order directing the planning authority to grant to the applicant a certificate in respect of the development.

(b) The court may at the hearing of an appeal under *paragraph (a)*—

(i) dismiss the appeal and affirm the refusal of the planning authority to grant the certificate, or

(ii) allow the appeal and direct the planning authority to grant the applicant a certificate in respect of the development concerned.

(15) A planning authority shall comply with a direction of the court under this section.

(16) (a) Subject to *paragraph (b)*, a planning authority shall revoke a certificate, upon application in that behalf being made to it by the owner of land to which the certificate related, or by any other person acting with the permission of such owner.

(b) A planning authority shall not revoke a certificate under this subsection where permission has been granted in respect of the development to which the certificate relates.

(17) A person who, knowingly or recklessly—

(a) makes a statutory declaration under *subsection (5)*, or
(b) in purported compliance with a requirement under *subsection (6)*, provides a planning authority with information or documentation,

that is false or misleading in a material respect, or who believes any such statutory declaration made, or information or documentation provided in purported compliance with such requirement, by him or her not to be true, shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 6 months, or to both, or
(ii) on conviction on indictment to a fine not exceeding £500,000 or to imprisonment for a term not exceeding 5 years, or to both.

(18) A person who—

(a) forges, or utters, knowing it to be forged, a certificate purporting to have been granted under this section (hereafter in this subsection referred to as a "forged certificate"),
(b) alters with intent to deceive or defraud, or utters, knowing it to be so altered, a certificate (hereafter in this subsection referred to as an "altered certificate"), or
(c) without lawful authority or other reasonable excuse, has in his or her possession a forged certificate or an altered certificate,

shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 6 months, or to both, or
(ii) on conviction on indictment to a fine not exceeding £500,000 or imprisonment for a term not exceeding 5 years, or to both.

(19) Where a person is convicted on indictment of an offence under *subsection (17)* or *(18)*, the court may in addition to any fine or term of imprisonment imposed by the court under that subsection order the payment into court by the person of an amount that in the opinion of the court is equal to the amount of any gain accruing to that person by reason of the grant of a certificate on foot of the

statutory declaration, information or documentation, as the case may be, to which the offence relates, and such sum shall, when paid in accordance with such order, stand forfeited.

(20) All sums that stand forfeited under *subsection (19)* shall be paid to the planning authority that granted the certificate concerned and shall be accounted for in the account referred to in *section 96(13)* and be applied only for the purposes specified in that section.

(21) Where a person is convicted of an offence under *subsection (17)*, the court may revoke a certificate granted on foot of a statutory declaration, information or documentation to which the offence relates, upon application being made to it in that behalf by the planning authority that granted the certificate.

(22) A person shall not, solely by reason of having been granted a certificate, be entitled to a grant of permission in respect of the development to which the certificate relates.

Allocation of affordable housing.

98.— […]

Controls on resale of certain houses.

99.— […]

Regulations under this Part.

100.—[…]

Housing and planning authority functions.

101.—(1) Where a planning authority performing any function under this Part is not the housing authority for the area of the function, the planning authority shall consult with the housing authority for the area with respect to the performance of that function.

(2) In this section, a reference to a “housing authority” means a housing authority as defined pursuant to section 23(2) of the Housing (Miscellaneous Provisions) Act, 1992.

Appendix 6.
Guidelines issued by the Minister for Housing, Local Government and Heritage under section 28 of the Planning and Development Act 2000

An Ghníomhaireacht Tithíochta
The Housing Agency

An Roinn Tithíochta, Pleanála,
Pobail agus Rialtais Áitiúil
Department of Housing, Planning,
Community and Local Government

Part V of the Planning and Development Act 2000

Guidelines issued by the Minister for Housing, Planning, Community and Local Government under section 28 of the Planning and Development Act 2000

January 2017

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Appendix *List of Circulars*

Part V of the Planning and Development Act 2000: Guidelines under section 28

1. Introduction

As local authorities are aware, Part V of the Planning and Development Act 2000 was amended with effect from 1 September 2015. Since 31 August 2015, 2 guidance circulars have been issued by the Department and one Guideline under section 28 of the Planning and Development Act 2000:

Circular Housing 33 of 2015 of 31 August 2015
Urban Regeneration and Housing Act 2015 – amendments to the operation of Part V of the Planning and Development Act 2000.

Circular PL 10/2015 and Housing 36/2015 of 30 November 2015
Part V - Implementation of Article 22(2)(e) of the Planning and Development Regulations 2001, as amended – Validation of Planning Applications.

Guidelines on Application of Part V of the Planning and Development Act 2000, after 1 September 2015, to developments granted permission prior to 1 September 2015, May 2016.

This current Guideline deals with specific issues, largely in relation to the making of the Part V agreement, having regard to the 2015 legislative changes, which have been raised in discussions with local authorities, developers and other stakeholders. These Guidelines are issued under section 28 of the Planning and Development Act 2000 and planning authorities are required to have regard to them in carrying out their functions under the Act.

It may be noted that a large number of Circulars and Guidance documents were issued in relation to Part V in the period from 2000 to 2012. These are set out in the Appendix. Some of these Circulars/Guidance documents are not currently relevant (e.g. those relating to affordable housing) and other existing Guidance documents, e.g. the ***2000 Guidelines for Planning Authorities on Part V of the Planning and Development Act, 2000 on Housing Supply*** and the ***Model Housing Strategy*** require some updating. The advice here supersedes any differing advice on any particular issue given in earlier Guidance/Circulars referred to above. A copy of any of the earlier guidance documents may be obtained from the Department on request.

The making of a Part V agreement is a function under the Planning and Development Act 2000, and the appropriate reference in relation to such functions should be to "planning authorities". However some of the actions referred to in these Guidelines will be carried out by the Housing Department/Section of the local authority. The term "local authority" is generally used throughout this document therefore (other than when quoting from the Planning Act).

2. Prior to grant of planning permission

2.1 Application of Part V

The first issue to be addressed is whether Part V actually applies: if the applicant applies for planning permission for a development of 9 or fewer houses or a development of houses on land of less than 0.1 hectare they can be exempted from Part V. The applicant will need to obtain an

exemption certificate by applying to the local authority prior submitting to a planning application (section 97). The change in the minimum number of units from the previous 4 to 9 was effected by the Urban Regeneration and Housing Act 2015 and is effective from 1 September 2015.

Other exemptions (section 96(13)) include:

- provision of houses by an approved body for social housing and/or affordable housing;
- conversion of an existing building or the reconstruction of a building to create one or more dwellings provided that at least 50% of the external fabric is retained;
- carrying out works to an existing house;
- development of houses under a Part V agreement.

2.2 Early consideration of Part V issues/pre-planning consultation

Consideration of Part V issues should commence at the earliest point possible. When a request is received for a pre-planning consultation the Planning Department of the local authority should inform the Housing Department of the proposal. It is important that the Housing and Planning Departments of the local authorities reach a shared vision in relation to the efficient delivery of appropriately located Part V units on the site, having regard to the Housing Strategy of the local authority, which of course is required to specifically to take into account -

- the existing need and the likely future need for social housing;
- the need to ensure that housing is available for persons who have different levels of income;
- the need to ensure that a mixture of house types and sizes is developed to reasonably match the requirements of the different categories of households, as may be determined by the local authority, and including the special requirements of elderly persons and persons with disabilities, and
- the need to counteract undue segregation in housing between persons of different social backgrounds.

It is important therefore that there is communication/contact between both sections at the earliest point following notification by the developer of a request for a pre-planning meeting.

The Housing Department may wish to contact the developer to inform him/her of the social housing requirements for the site and/or to invite the developer for preliminary discussions in relation to Part V, i.e. in advance of the pre-planning consultation. The developer is not of course obliged to attend discussions. In any event it is essential that all parties engage at the pre-planning meeting, in order to establish the acceptability of the principle of the development and set out parameters for design concepts etc., following which further discussion could take place between the developer and the Housing Department. It is important that the developer be informed of the social housing requirements for the site at the earliest stage so that this can be taken into account in the design of the development, e.g. the type of unit the local authority is interested in acquiring.

Where the local authority is considering using an Approved Housing Body (AHB) to deliver Part V, the views of the developer in relation to a possible partner AHB may also be obtained at this stage, although the selection of an AHB is ultimately a matter for the local authority. Preliminary discussions can also take place regarding number of units, costs, local market rent, etc. At this stage the local authority should inform the Department of indicative costs.

The Housing Department should be represented, at an appropriate level of seniority, at the formal pre-planning consultation under section 247 of the Planning and Development Act 2000. Where the developer has not attended a preliminary discussion with the Housing Department, the matters set out in the paragraph above should be discussed with the developer or his/her agent at the pre-planning meeting.

Where the local authority proposes to involve an AHB, having heard any views of the developer on this issue, they may wish to consider whether the body in question should also be invited to the pre-planning consultation, subject to other considerations e.g. confidentiality. The local authority should also discuss the cost of the units with the AHB at an early stage.

The requirements in relation to pre-planning consultations are dealt with at Chapter 2 of the Department's Development Management Guidelines for Planning Authorities 2007,

http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownLoad%2C14467%2Cen.pdf

including

- Section 247 consultations – statutory requirements in relation to section 247 consultations (2.5);
- Submission of details in advance of consultations (2.6);
- Pre-application meetings: who should attend? (2.7);
- How should a pre-application meeting be structured? (2.8);
- Keeping a record of what was discussed (2.9)

2.3 Planning application

When the planning application is made, it must be accompanied by the developer's proposals for complying with Part V. This matter was the subject of a detailed guidance Circular issued on 30 November 2015, *Circular PL 10/2015 and Housing 36/2015*.

The proposal is not required to be overly detailed but must contain:

- how the applicant intends to discharge his/her Part V obligation as regards a selection of a preferred option from the options available under the Act;
- details in relation to the units or land to be provided; and
- indicative costs.

As stated above, detailed advice is given in Circular PL 10/2015 and Housing 36/2015, which it is not proposed to repeat here.

A copy of the planning application, including the Part V proposal, should be sent by the Planning Department to the Housing Department, or the Housing Department should be notified of the availability of the application.

Where is it decided to grant permission for the development, it is essential that the Part V condition comply with section 96(2) of the Act, as amended. It is recommended that the planning condition should adhere closely to the wording of section 96(3) and include e.g.

"that the applicant, or any other person with an interest in the land to which the application relates shall, prior to the lodgement of a commencement notice within the meaning of Part II of the Building Control Regulations 1997, enter into an agreement with the planning authority under section 96 of the Planning and Development Act 2000, providing, in accordance with that section, for the matters referred to in paragraph (a) or (b) of subsection (3) of section 96.

3. Making of Part V agreement

3.1 Options for agreement

Following the grant of planning permission the Planning Department should inform the Housing Department of the grant of permission; it is possible that the latter Department might have to review its Part V intentions in the light of the permission as granted. The Housing Department should contact the developer at this point to open substantial negotiations in relation to the Part V agreement.

The guidance in this section refers to the making of the Part V agreement from the commencement of the discussions/negotiations for such agreement, which as stated above, will commence at the pre-planning application consultation, if not prior to that, in consultations between the developer and the Housing Department.

Section 96(3) of the Act, as amended, deals with the making of the Part V agreement.

As stated in the Guidelines on ***Application of Part V of Planning and Development Act 2000, after 1 September 2015, to developments granted permission prior to 1 September 2015, May 2016***, the provisions of the amended Part V apply to all agreements made after 1st September 2015.

In accordance with section 33(2) of the Urban Regeneration and Housing Act 2015, Part V agreements made prior to 1 September 2015, where a commencement notice had not been lodged by that date, may be amended prior to the lodgement of such commencement notice, with the consent of both parties, provided that the amended agreement complies with the provisions of section 96 as amended (including the 10% figure instead of the previous 20%).

Section 96(3) sets out the 6 types of Part V agreement that may be made.

1. Transfer to the ownership of the local authority of a part or parts of the land subject to the planning application *(section 96(3) paragraph (a)).*

2. Build and transfer to the ownership of the local authority, or persons nominated by the authority, of a number of housing units on the site subject to the planning application *(section 96(3) paragraph (b)(i)).* (Up to 10% of the units in the development).

3. Transfer to the ownership of the local authority, or persons nominated by the authority, of housing units on any other land in the functional area of the local authority *(section 96(3) paragraph (b)(iv)).*

4. Grant a lease of housing units to the local authority, either on the site subject to the planning application or on any other land within the functional area of the local authority *(section 96(3) paragraph (b)(iva)).* This is a new option, inserted in 2015.

5. A combination of the transfer of the ownership of land under paragraph (a) of section 96(3) and one or more of the options at paragraph (b)(i), (b)(iv) and (b)(iva) of section 96(3) *(section 96(3) paragraph (b)(vii)).* That is, a combination of a transfer of land and one or more of the other options.

6. A combination of 2 or more of the options set out at paragraphs (b)(i), (b)(iv) and (b)(iva) of section 96(3), i.e. a combination of options not including a transfer of the ownership of land *(section 96(3) paragraph (b)(viii)).*

Table A below sets out the information required from the applicant in connection with the Part V negotiation.

Table A: Checklist of information required of applicant (after grant of permission).

Information Required	Provided: Yes/No
Provision of Housing Option: ▪ Location and area of land subject to planning permission (map). ▪ Drawings and outline specification of units to be transferred to the local authority. ▪ Number and location of Part V units. ▪ Time-scale for delivery of Part V units. ▪ Design Standards – standards in relation to layout, size and design.[1] ▪ Outline specification (size, building materials, finishes and fittings). ▪ Provision of car parking spaces for Part V units. ▪ Details of management/maintenance agreement (where available). ▪ Infrastructural services to apartments/houses. ▪ Cost for each apartment /house. ▪ Basis on which land value and building/attributable development costs have been determined. ▪ Financial compensation i.e. price proposed that the local authority will pay for housing units. ▪ Details of the proposed or indicative Service Charges in multi-unit developments.	
Provision of Housing by way of a Lease In addition to the location and specification details listed above, the following financial information should be included: ▪ Market rents of the units proposed. ▪ Lease rent proposed including additional discount to meet equivalent net monetary value.	
Provision of Lands Option: ▪ Location and area of land subject to planning permission (map). ▪ Location and area of land proposed to transfer to local authority (map). ▪ Details of any encumbrances e.g. rights of way.	

[1] *In relation to social housing regard should be made to the Social Housing Design Guidelines, Department of the Environment, Community and Local Government*

▪ Proposals for boundary treatment of land. ▪ Details of site investigation undertaken and/or any other relevant information in relation to the land. ▪ Confirmation of legal basis on which it is proposed to transfer title to the local authority. ▪ Open space and landscaping proposed. ▪ Financial compensation i.e. the price agreed that the local authority will pay for the land.	

As was the case prior to September 2015 the position is that where the developer wishes to fulfil the Part V obligation by way of the transfer of land, on the site the subject of the planning application, to the local authority, this must be accepted by the local authority.

Where the developer does not wish to exercise the option of transferring land under section 96(3)(a), the local authority should consider which type of agreement it should enter into of the 6 options set out above.

In considering this the local authority is required to consider the following, pursuant to **section 96(3)(c)** of the Act:

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

(ii) whether the 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 the 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.

Under **section 96(3)(h)** the local authority is also required to consider:

(i) the proper planning and sustainable development of the area to which the application relates;

(ii) the housing strategy and the specific objectives of the development plan which relate to the implementation of the strategy;

(iii) the need to ensure the overall coherence of the development to which the application relates, where appropriate, and

(iv) the views of the applicant in relation to the impact of the agreement on the development.

Where it is not possible for the local authority to conclude an agreement which meets with its needs under section 96(3)(b)(i), (iv), (iva), (vii) or (viii) then the default position applies, section 96(3)(a), and the agreement must provide for the transfer of land to the local authority.

It is considered that the priority option which should be pursued by local authorities is the acquisition of social housing on the development site, by means of transfer of ownership to the local authority or to an AHB. While the option of leasing was inserted into the Act in 2015, the main purpose of this was to enable Part V agreements to continue to be made in cases where insufficient capital funding is available for the acquisition of units. As units leased may revert to the developer at the end of the lease period, and hence be removed from the local authority's social housing stock, the aims of Part V, and of the Government's social housing policy, will be better achieved by the acquisition of houses, rather than leasing. Accordingly it is recommended that where capital funding is available, including through AHBs, the local authority should seek the acquisition of houses on the development site.

Local authorities may also wish to consider whether the Part V units should be purchased upfront, as provided for in *Rebuilding Ireland – Action Plan for Housing and Homelessness,* in order to support the development of private housing in a particular area. Further guidance in this regard will be issued.

The acquisition of units on the site of the development is the recommended option in order to advance the aim of achieving a social mix in new developments. This option should be pursued by the local authority from its earliest engagement with the developer, with a view to acquiring houses which meet its social housing requirements for that area/site.

It is recognised that there may be occasional cases where none of the units on the sites are suited to the needs of the local authority. Every effort should however be made by the local authority, by engagement with the developer at the design stage of the project, to ensure that units suitable for the local authority's needs are included in the project. The local authority is also, as set out above, required to consider whether the agreement constitutes the best use of financial resources, and in some cases it may be that acquiring units in the development would not be an efficient use of resources.

These situations might occur where:

- the size of units is unsuitable for the local authority;
- the land or development costs are particularly high;
- the units are of significantly higher specification than would be the case in a local authority own housing project;
- there are excessive annual management fees associated with the development.

In these cases the local authority must pursue one of the other available options e.g. the acquisition of land on the development site (section 96(3)(a)) or the building or acquisition by the developer of houses/units elsewhere in the functional area of the local authority, and the transfer of those houses to the local authority or persons nominated by the local authority, including an AHB (section 96(3)(b)(iv).

While the Act does not specify this as a requirement, it is recommended that the number of houses transferred by the developer under section 96(3)(b)(iv) should be broadly equivalent to the number that would have been transferred had the local authority been able to secure agreement for the provision of houses on the development site. In any case, whatever number of houses are transferred the net monetary value must be achieved by the local authority (see 3.3 below).

In view of the track-record of the voluntary and cooperative housing sector, and of the fact that approved housing bodies are uniquely placed to help overcome vertical segregation in housing, **approved housing bodies** remain at the heart of the Government's vision for housing provision. This is recognised in the enhanced role given to AHBs in the Social Housing Strategy 2020 and in Rebuilding Ireland, the Action Plan for Housing and Homelessness. Accordingly local authorities should strongly consider the involvement of AHBs in its implementation of Part V.

3.2 Priority to be given to making of Part V agreement

As the grant of permission will now contain a condition requiring that the Part V agreement be entered into by the developer/other person with an interest in the land to which the development relates, prior to the lodgement of a commencement notice under the Building Control Regulations 1997, the Part V agreement must be entered into before the development can lawfully commence.

It is crucial therefore that there is no delay at all by the local authority as regards the making of the Part V agreement; all requests from the developer/for meetings, information etc. should be responded to promptly. The local authority should also obtain any required valuations as quickly as possible. Both the local authority and the developer should respond to any submission/request for information from the other within a 2 week period.

Where a provisional Part V agreement was in place prior to the granting of permission, and the grant of permission changes the proposed number of units, the local authority should renegotiate the agreement where this is necessary, without delay.

Section 96(8) of the Act was amended in 2015 to provide that the local authority, in addition to, as previously provided, the applicant or any other person with an interest in the land to which the application relates, may, in cases where the Part V agreement is not entered into before the expiration of 8 weeks from the date of the grant of permission, because of a dispute:

(a) refer the dispute under that subsection to the An Bord Pleanála except

(b) where the dispute relates to a matter falling within section 96(7), in which case the dispute may be referred to a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act, 1960.

Local authorities should ensure that negotiations with the developer are commenced during the 8 week period after the grant of permission, so that if it subsequently becomes necessary to refer issues to An Bord Pleanála or the Property Arbitrator, the condition of there having been a dispute, or at least a failure to reach agreement, in the 8 weeks following the grant of permission, will have been met. (In a case where there was no contact between a local authority and a developer in this 8 week period, it might be argued that as there was no contact, it could not be said that "because of a dispute" the agreement was not entered into prior to the expiration of this

period, and that the necessary condition for referring a matter to An Bord Pleanála or the Property Arbitrator has not therefore been met).

Where a matter has been referred to the An Bord Pleanála or the Property Arbitrator, and both sides are agreed to abide by the adjudication of the Board or the Arbitrator, as the case may be, it should be possible to conclude the Part V agreement on this basis, so that the development can commence.

Where funding is being sought from the Department, whether by a local authority or an AHB, the approval of the Department should be obtained before the Part V agreement is finalised. However, the approval of the Department need not be sought, prior to the making of the Part V agreement, for the capital acquisition of houses by the local authority under Part V in cases where the price of the units do not exceed the Department's unit cost ceilings, in cases where the total value of the acquisition is less than €600,000 (see Circulars Housing 24/2015 and Housing 28/2015).

If the local authority considers that the units should be purchased upfront, the Department should be advised as soon as possible, so that the requisite approval can be obtained in good time and any delays in commencing the development can be avoided.

3.3 "Net monetary value"

Section 96(3)(b) provides that whichever option a local authority pursues

- the "net monetary value" of the property transferred, or
- the reduction in the rent payable by the local authority over the term of a lease (pursuant to paragraph (iva) of the subsection)

must be equivalent to the net monetary value of the land that the local authority would receive if the Part V agreement had provided for a transfer of land under section 96(3)(a). The "net monetary value" here is defined as the market value less the existing use value.

Existing use value is defined in section 96(6) as the value of the land calculated by reference to its existing use **on the date on which the permission was granted for the development** on the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development. That is, the existing use value is calculated as of the date permission was granted, but as if permission had not been granted and would never be granted.

The market value should also be calculated by reference to the date on which planning permission was granted.

Accordingly, the "net monetary value" which the local authority must achieve, in any Part V agreement other than an agreement for the transfer of land, is the difference between the existing use value of the land it would have acquired, normally 10% of the site, and the market value of that piece of land. Essentially the net monetary value that must be achieved by the local authority is **10%** of the difference between the existing use value of the site and the market value of the site, calculated on the date that planning permission was granted for the development.

For instance where the existing use value of the site on the date of the grant of planning permission is €100,000 and the market value of the site on that date is €500,000, the net monetary value to be achieved by the local authority, in any agreement other than acquiring 10% of the land, is €40,000 (10% of the difference).

Housing developments

Where the Part V agreement is to transfer units, the price to be paid by the local authority for the houses (see section 96(3)(d)) is the site costs of the houses and the construction/development costs (see below).

In the case of the transfer of units, the Act does not set out a methodology for calculating the net monetary value of the units to be transferred, but as the building costs are recouped in full, the net monetary value must be assessed by reference to land being transferred. Accordingly it is necessary to attribute appropriate land costs to each unit being transferred in order to calculate the net monetary value being achieved.

In the case of housing developments, where the houses are generally on similar sized plots, the local authority will normally achieve the net monetary value where it acquires 10% of the houses, paying existing use value for the plots/sites (and refunding the construction costs and development costs to the developer), as the following example shows.

Example

A development of 20 houses on a site of 6000 sq. m.
Existing use value of site €100,000
Market value €400,000

Net monetary value to be achieved by local authority **€30,000**, that is, 10% of €300,000 (€400,000 - €100,000) the difference between the market value and the existing use value of the site.

Assume each house sits on a plot of 210 sq.m. (the houses comprise 70% of the site, 4200 sq. m, i.e. each plot comprises 3.5% of the site).

Each house therefore is deemed to have an apportioned land cost of €5,000 (€100,000 ÷ 20) existing use value and €20,000 (€400,000 ÷ 20) market value, and for each house the local authority acquires paying existing use value for the plot it makes a gain of €15,000. In taking 2 houses – 10% of the houses – the local authority gains €30,000, which is the net monetary value.

Where the plots are of substantially different sizes, local authorities might attribute land costs per square metre, as set out below.

Example

Site 12,000 sq. m. existing use value €250,000, market value €700,000. Net monetary value = €45,000, that is 10% of €450,000 (€700,000 - €250,000), which is the difference between the existing use value and the market value of the site.

15 plots of 320 sq.m. = 4,800
15 plots of 210 sq. m.= 3,150
Total = 7,950 sq.m.

The combined size of all the plots is 7,950 sq. m. The attributable land cost per sq. m of plot = €31.44 existing use value (€250,000 ÷ 7,950), €88.05 market value (€700,000 ÷ 7,950). Therefore for each square metre of plot the local authority acquires paying existing use value it makes a gain of €56.60 (€88.05 - €31.44).

The local authority decides to acquire 3 houses – 10% of the houses.

In a case where the local authority takes 2 of the houses on the larger plots, and 1 of the houses on the smaller plots, it acquires 850 sq. m. (320 x 2 and 210 x 1) and, paying existing use value for the plots, it realises a net monetary value of €48,110 (850 x €56.60) which exceeds the required monetary value of €45,000; this excess should be paid to the developer in addition to the construction and development costs.

The reverse situation would apply where the local authority acquires 2 of the houses on the smaller plots, and 1 of the houses on the larger plots. In this case, in acquiring 740 sq. m. (320 x1 and 210 x 2) at existing use value, it realises a net monetary value of €41,884 (740 x €56.60), which is short of the required monetary value of €45,000; the shortfall can be deducted from the construction and development costs due to the developer**.**

Apartment developments

Again an approach based on units can be taken where the apartments in the development are of similar sizes.

Take for example a development of 200 apartments.
The existing use value of the land is €48,000, and the market value after the grant of planning permission is €480,000. **€43,200** is therefore the net monetary value (10% of €432,000 which is the difference between €480, 000 and €48,000) that must be achieved in the Part V agreement.

Where the apartments are of equal size and the local authority acquires 10% of the apartments, it will automatically realise the net monetary value as set out in Example 1 below.

Example 1
Where the apartments are of equal size, we can say the attributable land costs for each apartment is €240 existing use value (€48,000 ÷ 200), and €2,400 market value (€480,000 ÷ 200). In acquiring 20 apartments, paying a land cost of €240 per apartment, the local authority is making a gain of €2160 per apartment (€2,400 - €240) or a total gain of **€43,200** (€2,160 x 20). That is, it has achieved the required net monetary value.

Where the apartments are of different sizes, it is suggested that the land costs might be apportioned per square metre of floor area to ensure the local authority achieves the net monetary value, as set out in Example 2 below.

Example 2
The 200 apartments comprise –
50 No. 3-bed (100 sq. m. each - total for all apartments 5,000 sq. m)
120 No. 2-bed (80 sq. m. each - total for all apartments 9,600 sq. m)
30 No. 1-bed (65 sq. m. each -total for all apartments 1,950 sq. m)

Adding the total floor area of all the apartments gives us 16,550 sq.m. Therefore we can say that the land costs attributable to each square metre of floor area are €2.90 existing use value (€48,000 ÷ 16,550) and €29.00 market value (€480,000 ÷ 16,550). Therefore for each square metre of floor area that it acquires at existing use value, the local authority realises a net monetary value of €26.10 (€29.00 – €2.90).

If the local authority decides to acquire 20 apartments as follows -

5 No. 3-bed, 100 sq. m. each: total 500 sq. m
8 No. 2-bed, 80 sq. m. each: total 640 sq.m
7 No. 1-bed, 65 sq. m. each : total 455 sq.m

that is, a total of **1,595 sq. m.**, the total net monetary value realised by the local authority would be €41,629.5 (€26.10 x 1,595). This is a slight shortfall (€1,570.5) in the net monetary value of €43,200 which should be achieved. The shortfall should be deducted from the building costs payable to the developer.

However, in a case where the local authority acquires 20 apartments as follows -

10 No. 3-bed, 100 sq. m. each: total 1000 sq. m
10 No. 2 bed, 80 sq.m. each: total 800 sq. m

that is, a total of **1,800 sq. m**., the total net monetary value realised by the local authority in this instance would be €46,980 (€26.10 x 1,800). This exceeds the required net monetary value of €43,200 and in this instance the excess sum (€3,780) should be paid to the developer in addition to the building costs.

It should be noted that where the net monetary value would not be achieved by the local authority by taking 10% of units of the preferred kind (e.g. 2 bedroom units), the balance should be achieved through an increased discount being given by the developer on those units: it is not appropriate for the local authority to require more than 10% of the units via a Part V agreement where the developer does not wish this.

Where 10% of the units is an uneven number e.g. 6.5 (the development comprises 65 units) and the developer does not wish to sell the rounded up number of units – 7 - to the local authority, 6 units should be acquired, with the appropriate additional discount, calculated as set out above.

Leasing arrangements

Where the Part V agreement is for the leasing of units to the local authority from the developer, the net monetary value must be realised by the local authority in the form of a discount from the normal market rent over the period of the lease. It should be noted that such discount is in addition to the normal discount obtained by the local authority in respect of maintenance, management and void periods specified in the lease.

3.4 Compensation

The compensation to be paid to the developer for the land is calculated in accordance with section 96(6); it will normally be the existing use value on the date permission was granted but a higher cost may be paid in some particular cases e.g. land purchased before 25 August 1999, where the specific conditions of section 96(6)(a) are met.

3.5 Construction costs

The construction costs to be paid to the developer in respect of the construction of units are set out in section 96(3)(d)(ii), i.e.

"the costs, including normal construction and development costs and profit on those costs, calculated at open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works, including the appropriate share of any common development works, as agreed between the authority and the developer."

It should be noted that while Circular AHS 2/05 of 8th September 2005 referred to the payment of a developer's profit in addition to a builder's profit, the above provision does not provide for a developer's profit, as it refers to the cost that would have been incurred by the local authority had it retained an independent builder to undertake the works. The advice in Circular AHS 2/05 in relation to developer's profit is therefore no longer relevant and is rescinded.

Table B below is a sample of the calculation of compensation payable by the local authority to the developer for a housing unit.

Table B

Nature of Costs.			
1. Normal Construction Costs (ex. VAT & builders profit)			140,000
2. Builders' Profit (dependent on tender climate – for purpose of example say 7.5%)			10,500
3. Development Costs (as applicable)			
3.1 Professional Fees including Legal Fees		5,000	
3.2 Service Connections		3,000	
3.3 Development Contributions		1,000	
3.4 Site Investigations		500	
3.5 Planning Fees and Charges		500	
3.6 Financing Charges		5000	15,000
4. Sub-Total			**165,500**
5. Land Costs (existing use value)			2,000
6. Sub-Total			**167,500**
7. VAT @ 13.5%			22,613
Total			**190,113**

Notes:

1. Construction costs include costings related to: Sub-structures; Super-structures; External Works; Site development works; Abnormal works; Indirect project costs. Includes appropriate share of any common development works.
2. Builder's profit should be agreed based on open market rates that would have been incurred by the local authority had it retained an independent builder to undertake the works.
3. Attributable development costs include design team fees; Service connections; Development contributions (if applicable); Site investigation; Financing charges; Legal expenses; Homebond registration (or approved equivalent); Planning fees/charges.

Builder's profit should be a reasonable profit, determined by reference to prices for work pertaining to competitive tenders for similar work current in the locality. The unit cost ceilings issued to each local authority on 17 July 2015, Circular Housing 28/2015, and any updated cost ceilings issued by the Department, should be a guide in this matter.

3.6 Contracts and Conveyancing

Matters of contracts between the applicant and the local authority should be addressed at an early stage, to avoid subsequent delays. The developer should initiate the process of issuing conveyancing and purchase contracts as early as possible in the process. In addition, both the local authority and the applicant should nominate a designated individual who will ensure that all the steps are in place to complete the transfer and early occupation of houses. This will ensure that nominees are selected for the designated houses and that the requisite legal documents are in place.

One issue worth noting is that under the provisions of Section 23 (1)(b) of the Registration of Title Act 1964, statutory authorities (including Local Authorities and the State) are obliged to apply for first registration of all unregistered land acquired by them. The Registration of Title Act came into effect on 1st January 1967. The Local Authority registers the land with the Property Registration Authority of Ireland. In order to do this they need to show good title and to have the site mapped. Where a site is not registered with Property Registration Authority of Ireland, it is important to address the matter at an early stage to avoid subsequent delays.

3.7 Amendment of a Part V agreement

As stated in the ***Guidelines on Application of Part V of Planning and Development Act 2000, after 1 September 2015, to developments granted permission prior to 1 September 2015,*** issued on 4 May 2016, a Part V agreement may subsequently be amended with the agreement of both parties.

Appendix

LIST OF PART V GUIDANCE NOTES AND CIRCULARS ISSUED BY THE DEPARTMENT

30 March 2000	**Circular HS 1/00** Part V of the Planning and Development Bill, 1999, Housing Supply. Draft Guidelines
13 December 2000	**Circular HS 4/00** Guidelines for Planning Authorities Part V of the Planning and Development Act, 2000 Housing Supply: enclosing the Guidelines and the Model Housing Strategy below.
December 2000	***Part V of the Planning and Development Act, 2000: Housing Supply Guidelines for Planning Authorities***
December 2000	***Part V of the Planning and Development Act, 2000: Housing Supply - A Model Housing Strategy and Step by Step Guide***
31 January 2001	**Circular HS 2/01** Preparation of Housing Strategies
26 February 2001	**Circular HS 3/01** Preparation of Housing Strategies
24 May 2001	**Circular HS 9/01** Preparation and implementation of housing strategies
26 June 2001	**Circular HS 10/01** **Guidelines on Model Scheme of Allocation Priorities**
6 March, 2002	**Circular HS 1/02** Part V, Planning and Development Act, 2000 Housing Supply Enclosing Guidance below
February 2002	***Part V of the Planning and Development Act, 2000: Implementation Issues***
11 March 2003	**Circular Letter PD 2/2003** Planning and Development 11 March 2003 (Amendment) Act, 2002
April, 2003	**Circular HPS 2/2003** Implementation of social & affordable housing schemes, sale of local authority dwellings & regulation of private rented accommodation 1 Jan – 31 Mar 2003
9 July, 2003.	**Circular HMS 7/03** Planning and Development Acts 2000 – 2002, Part V - House Completions 2003
15 August 2003	**Circular HMS 9/03** Planning and Development Acts 2000 – 2002 Part V Housing Supply
Lúnasa 2003	***Part V of the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2002*** ***Further Guidance on Implementation Issues***

6 April 2004	**Circular HMS 4/04** Planning and Development Acts 2000 – 2002 Part V - Housing Supply, Implementation Issues
4 April 2005	**Circular AHS 1/05** Re: Provision of mortgage finance by private lending institutions to Affordable Housing applicants
8 September 2005	**Circular AHS 2/05** Planning and Development Acts 2000 – 2002 Part V, Section 96(3)(d)(ii) – "Profit on the Costs"
1st September 2005	**Circular AHS 3/05** Additional lender offering mortgage finance to Affordable Housing applicants
16 March 2006	**Circular AHS 1/06** Use of Part V Ring-Fenced Funds
12 April 2006 **(3 April 2006?)**	**Circular AHS 2/06** Additional Lender Offering Mortgage Finance to Affordable Housing Applicants
30 August 2006	**Circular AHS 3/06** Launch of "Your Affordable Home Handbook"
	Your Affordable Home Handbook
27 November 2006	**Circular AHS 4/06** Part V of the Planning and Development Acts 2000 – 2006 Implementation Issues
28 December 2006	**Circular AHS 5/06** Use of Part V Ring-Fenced Funds – Delegated Authority & Accounting Procedures
11 June 2007	**Circular AHS 1/07** Re: Housing Action Plans and Affordable Housing Statistics
11 June 2007	**Circular AHS 2/07** Information Required on Part V – use of funds, referrals to arbitration and any related legal proceedings
8 July 2007	Development Management Guidelines
2 August 2007	**Circular AHS 3/07** Additional Lender Offering Mortgage Finance to Affordable Housing Applicants
6 September 2007	**Circular AHS 4/07** Part V funds – receipts and expenditure
10 January 2008	**Circular AHS 1/08** Additional Lender Offering Mortgage Finance to Affordable Housing Applicants
11 January 2008	**Circular AHS 2/08**

	Seeking observations re statistical returns on all affordable housing schemes and Part V
12 February 2008?	**AHS 2/08** Additional Lender – Ulster Bank
29 February 2012	**Circular Housing 11/2012** Review of Part V of the Planning and Development Act 2000 - 2010
27 February 2015	**Circular Housing 12/2015** Part V Planning and Development Act 2000-2010 – local authorities to maximize provision of dwellings - Circular 11 of 2012 rescinded
31 August 2015	**Circular: Housing 33 of 2015** Urban Regeneration and Housing Act 2015 – amendments to the operation of Part V of the Planning and Development Act 2000
30 November 2015	**Circular PL 10/2015 and Housing Circular 36/2015** Re: Part V - Implementation of Article 22(2)(e) of the Planning and Development Regulations 2001, as amended – Validation of Planning Applications.

Appendix 7.
Chapter 2 of the Development Guidelines for Planning Authorities 2007

An Ghníomhaireacht Tithíochta
The Housing Agency

Chapter 2 Pre-Application Consultation

2.1 Introduction

Pre-application consultation is generally very beneficial and will improve the quality of a subsequent planning application. It is in the interest of the planning authority and the applicant that the latter has the maximum amount of relevant information on the application process itself, development plan objectives and other relevant considerations prior to making a planning application. This Chapter deals with the pre-application stage of the planning application process.

2.2 Making information available to potential applicants

Outside of, or before, actual consultation, it is important that planning authorities make the maximum amount of relevant information available to potential applicants to assist them in relation to a possible planning application. Apart from the statutory requirement to maintain the planning register[7] and to make copies of the development plan available for inspection or purchase[8], it is very much in the interest of both the planning authority and the prospective applicant that the latter should be able to readily access all relevant background information. Planning authorities should ensure that not only is all such information easily accessible in the vicinity of the public counter, together with desks or tables to facilitate examination of large plans or maps, but that trained staff are available to answer queries of a general nature. It is also desirable that planning authorities would make much of this information available through their websites, as doing so will greatly facilitate access at a time and place convenient to customers and will relieve the pressure at public counters.

Ancillary information, such as local area plans, DEHLG planning leaflets, Government directives and guidelines, Record of Protected Structures, heritage and conservation maps (including information on Special Areas of Conservation, etc.) should also be provided near the public counter and on-line, either on the planning authorities' websites or through relevant links. Where plans/studies have been prepared (such as Integrated Framework Plans or Local Area Plans), these also should be available for viewing at the public counter.

2.3 Pre-application consultation: general

Pre-application consultation in its broadest sense covers a range of contacts between potential applicants and the planning authority, which can include contact/discussion/communication face-to-face, by telephone, letter, fax, or e-

[7] Section 7 of the Act
[8] Section 16 of the Act

mail. Very frequently potential applicants will contact a planning authority with general queries and the availability of assistance here is a valuable and helpful service to the public and may avoid the necessity, on the prospective applicant's part, to seek more elaborate consultation. Planning authorities should ensure that staff are readily available to deal with such casual enquiries. A number of planning authorities offer informal planning advice through clinics, sometimes held in local offices. It is important to ensure that the planning staff that attend such clinics are given appropriate training to deal in an efficient and helpful manner with the public. The type of consultation provided will vary greatly, depending on the nature and scale of the proposed development, and on the staff resources available to the planning authority. Every effort should be made to facilitate, as far as is practicable, reasonable demands for pre-application consultations, and planning authorities should use whatever format is considered appropriate to their circumstances to facilitate such requests. Efforts should also be made, however, to provide consultation in the form that it is requested. Requests for consultations should be acceptable by telephone or in writing. Whatever form of consultation is requested, e.g. a meeting, a telephone conversation or response to an e-mail, planning authorities should aim to facilitate such requests as soon as possible, but in any event within 2-3 weeks.

Some of the above communications will constitute section 247 consultations while some will not. Paragraph 2.5 below attempts to clarify this issue, while promoting the greatest flexibility for planning authorities.

The provision of pre-application consultations does have resource implications for planning authorities, but such consultations merit investment of resources because of the overall benefits to the planning system, particularly in terms of improved quality of planning applications and development proposals.

The Department's *Architectural Heritage Protection Guidelines for Planning Authorities* (2004) should be consulted in relation to pre-application consultations involving protected structures[9].

2.4 Benefits of pre-application consultation

Pre-application consultation has many benefits. Such consultations will generally improve the quality of a subsequent planning application and will ideally obviate the necessity for seeking additional information. They provide the applicant/agent with an opportunity to discuss/consult on the merits of a proposal for development at an early stage and to avoid wasting time and money on a development proposal that has no chance of success. Such consultations also allow the planning authority an opportunity to play a pro-active role in guiding a project from its inception in accordance with proper planning and sustainable development principles.

More specifically, consultations can be of value in:

[9] See also Chapter 7 below in relation to consultation with fire officers.

- **Applying development plan/local area plan objectives to a particular site**, and especially assessing how the design treatment responds to the local context, thus allowing the planning authority to input to design and layout at an early stage;

- **Co-ordinating the various local authority inputs to a complex or large-scale proposed development (see also para. 2.7 below);**

- Informing the applicant about **local policy documents** such as design guides, Action Area Plans, framework plans;

- Suggesting that further **specialist advice** be sought, e.g. in relation to conservation of the built or natural environment;

- Advising prospective applicants of **procedural requirements**, such as:
  - Planning application requirements, particularly in relation to protected structures;
  - Necessity to carry out Environmental Impact Assessment in certain cases;
  - Necessity to obtain IPPC licence or waste licence in certain cases;
  - Need to comply with other planning guidelines, where relevant, e.g. Retail Planning Guidelines, Sustainable Rural Housing Guidelines, Childcare Facilities Guidelines;
  - Implications of Building Control legislation, including provisions in relation to fire safety and access for the disabled (including, following the enactment/commencement of the Building Control Act 2007, provisions regarding Disability Access Certificates);
  - The necessity to ensure that the design implications of accessibility for all are addressed in the approach routes to buildings, including the location of car parking and other related issues; the National Disability Authority's publication "Building for Everyone" offers good practice on this issue; consultation with representative organisations of people with disabilities may also be of assistance;
  - Application of Major Accidents Directive in certain cases;
  - Possible exemptions for minor developments under section 5 of the Planning Act, and the mechanism for seeking a declaration that a particular development is exempted.

The number and nature of requests for further information may reveal, in particular planning authorities, other general matters that could benefit from discussion in pre-application consultations.

The carrying out of consultations cannot, however, prejudice the performance by a planning authority of any other of its functions under the Planning Act or under ancillary regulations. The prospective applicant should be reminded of

this and in particular reminded that the planning authority is obliged to take into account, in determining any subsequent application, submissions which may be received from third parties and prescribed bodies.

2.5 Section 247 consultations

Section 247 of the Planning Act provides that an applicant who has an interest in land may request a pre-application consultation regarding a proposed development and that the planning authority should not unreasonably withhold agreement to enter into such a consultation. More often than not an applicant who seeks a more formal consultation, of the type envisaged by section 247, will seek a face-to-face meeting with a planner. Accordingly section 247 consultations will frequently take the form of individual meetings held between planning officials and applicants/agents.

However there may be instances where both the applicant and the authority are happy to carry out such a consultation without a face-to-face meeting, e.g. over the telephone or by e-mail correspondence: the Act does not preclude this.

For a consultation to be deemed a section 247 consultation, the Planning Act requires that the applicant has an interest in the land concerned and that he/she wishes to consult about a particular proposed development.

The Planning Act also provides that in a section 247 consultation the planning authority must advise on:

- The procedures involved in considering a planning application;
- Any requirements of the permission regulations e.g. site and newspaper notices, documentation to be forwarded including maps, drawings and EIS where required;
- The relevant objectives of the development plan.

The Act also provides, most importantly, that a record must be kept of a section 247 consultation and that the record should be associated with the planning application file, should an application be made subsequently.

The Act allows planning authorities to meet their obligations in relation to section 247 consultations by means of planning clinics where planning officials meet the public with or without appointment. If the planning authority decides to carry out pre-application consultations under section 247 in the form of planning clinics, it must publish notice of the times and locations where discussions are to be held in one or more newspapers circulating in its area at least once a year. Not every face-to-face meeting at a planning clinic will constitute a section 247 consultation, as the potential applicant may merely be seeking some general advice. However, where the potential applicant wishes to consult about a specific proposed development on a

specific site, this brings the consultation under section 247 of the Act and the requirements of the section should be adhered to, in particular in relation to keeping a written record of the discussion.

As stated above, requests for consultations should be facilitated as speedily as possible so that where a meeting with the area planner is requested, such a meeting should ideally be arranged within 2-3 weeks. Where the area planner is unavailable, arrangements should be made to provide a properly briefed substitute; the keeping of full, detailed notes of the consultation will be important in such circumstances.

It should be noted that, in addition to other requirements of the ethics code[10] a member or official of the planning authority is guilty of an offence if he or she takes or seeks any favour, benefit or payment, directly or indirectly, in connection with any consultation or advice provided under section 247.

2.6 Submission of details in advance of consultations

To ensure that a consultation will be productive, the applicant may be required to submit a certain minimum level of documentation (depending on the scale of the proposal) in advance of a pre-application consultation. A guidance document in relation to such requirements should be available on the planning authority's website, which lists the range of maps, drawing types/scales and other details normally required in relation to different categories of site and development proposal. The guidance should also state the period in advance of the meeting that the documentation will require to be submitted.

2.7 Pre-application meetings: who should attend?

This will depend on the nature and scale of the proposed development, but as a general rule:

- Senior planning staff should attend in the case of large-scale or complex developments, or where the site has given rise to significant issues in the past;

- Representatives from all relevant local authority sections/departments (e.g. traffic or sanitary services engineers) should attend in the case of large-scale or complex proposals. This not only saves the applicant time in arranging a series of consultations, but perhaps more importantly, facilitates a co-ordinated approach by the authority; the detailed technical requirements of one department may have consequences for the layout or design that affects other departments.

[10] *Local Government Act 2001: Code of Conduct for Employees* (DEHLG, 2004).

- Both Housing and Planning representatives need to be involved in pre-application meetings involving Part V of the Planning Act (see para. 2.10 below);

- Heritage/conservation officers should be involved in cases involving protected structures, zones or sites of archaeological interest, and protected sites (such as Natural Heritage Areas or Special Protected Areas).

Planning authorities should ensure the availability of suitably sized and located meeting rooms to facilitate consultations.

2.8 How should a pre-application meeting be structured?

The aim of both parties should be to identify any potential issues arising from a development proposal at a sufficiently early stage in the design process in order to avoid needless delays and/or costs after an application has been lodged.

If it is clear from the development plan that the proposal is acceptable in principle, especially in the case of relatively small developments, the prospective applicant may be encouraged to bring reasonably detailed design drawings to the consultation.

Planning authorities will know from experience what issues are likely to arise in the case of the most common types of development in their areas and will be able to advise prospective applicants in advance on the kind of information which will be needed if consultations are to be productive. For example, in the case of rural housing, applicants should be able to demonstrate that the proposed site can satisfactorily accommodate drainage, can be accessed safely without creating a traffic hazard and can be sensitively incorporated into the landscape.

In the case of larger proposed developments, or where it is not certain that the proposal would be acceptable, it is important that issues of principle be resolved before proceeding to more detailed design issues. In such cases, the proponent should clearly explain the rationale for the proposed development. Equally, the planning officer will need to be explicit about what are “sticking points” from a development plan viewpoint. Relevant national policy which applies to the development should also be explained. While both sides should endeavour to find a constructive solution to problems, in some cases it may not be possible to reconcile the two positions. In such a case, it may be necessary for the planning authority to indicate that the proposal is unlikely to be considered favourably.

2.9 Keeping a record of what was discussed

As indicated above, section 247 of the Planning Act requires the planning authority to keep a written record of pre-application consultations under the section, including the names of those who participated. A copy of such record (and any documentation submitted) must be retained and placed on the planning file in the event of a subsequent planning application in respect of the proposed development. It will be necessary for the planning authority to have in place for records of pre-application consultation an appropriate filing system, that may be easily queried/searched when a planning application is received. As records of pre-application consultation form part of the planning file, they also should be forwarded to the Board in the event of an appeal.

The clear intention behind the requirement to keep a record is to inform those involved in determining any subsequent application, particularly if they were not directly involved in the prior consultation. The keeping of records can also ensure consistency of approach in situations where staff turnover is an issue or where the particular development proposal has a long time-span.

Key information which should be recorded includes:

- The postal address (where available) or an accurate description of the location. Ideally, if the planning authority has a Geographic Information System, the co-ordinates of a point within the site, or the site boundaries, should be digitised so that it can be easily traced in the event of a subsequent application;
- An indication of the area of the site;
- A succinct description of the nature and scale of the proposed development (e.g. number of housing units, or amount of floor space);
- A list of the documentation submitted describing the proposal;
- An indication of whether the proposal is in accordance with the development plan;
- An indication of whether key design or other issues remained to be resolved;
- An indication of whether further specialist advice is required (e.g. from the Heritage Service of the DEHLG);
- An indication of whether an environmental or retail impact statement is mandatory or likely to be needed.

Where design team acting for the prospective developer submits its own account of the consultation, this should also be kept with the file. It would be important to draw attention to any significant errors or misunderstandings at

the earliest opportunity, particularly if the prospects for a successful application were overestimated.

Best practice example

Limerick County Council uses a computerised system to keep detailed records of all pre-planning consultations held in the Council. Notes of the consultation are linked to the Council's GIS to facilitate retrieval later, and any documents handed over at the meeting are scanned in. The system can also track the time taken from the request for a consultation to the date when the consultation takes place.

Management structures need to be put in place to inform applicants whether, when the planning application is received, there has to be a material departure from the approach adopted by the planning authority at the pre-application consultation. Such a departure might be required if the subsequent application is substantially different from that originally discussed, or if planning authority needs to respond to valid issues raised by the public or by statutory consultees following submission of the application[11].

2.10 Part V consultations

The role of pre-application discussions in negotiating agreements for the provision of social and affordable housing required under Part V of the 2000 Planning Act (as amended by the 2002 Act) is discussed in Chapter 10 of *Part V of the Planning and Development Act 2000 – Housing Supply: Guidelines for Planning Authorities* (DELGH 2000) [12]. Key points include:

- The need to develop a shared approach between the applicant and the planning authority (and an approved housing body, where relevant);
- The need for the planning authority to have regard to the objectives set out in its Housing Strategy;
- The need for the planning authority to have regard to the overall coherence of the proposed development and to the views of the

[11] See also Chapter 6 on making recommendations on planning applications.
[12] See also *Implementation Issues* (DEHLG, 2002), *Further Guidance on Implementation Issues* (DEHLG, 2003), *Part V Resource Pack – Concluding Part V Agreements* (DEHLG and Affordable Homes Partnership, 2006) and DEHLG Circular AHS 4/06, November 2006.

developer in relation to the impact of the proposed agreement on the development;

- The importance of arranging joint planning and housing teams to negotiate Part V agreements. Where they are available, local authority architects should be also involved to ensure the design quality of the housing to be handed over to the authority;

- The importance of recording the essential elements of the proposed agreement.

Further guidance on Part V implementation issues, set out in Circular AHS 4/06[13], emphasises the importance of undertaking pre-planning consultations on Part V and sets out advice on how a range of matters relating to Part V should be dealt with efficiently in the planning process.

2.11 Pre-auction consultations

When a development site is put up for auction, prospective purchasers may seek consultations with the planning authority before making a bid. Such prospective purchasers should instead be referred to relevant information, such as development plan zoning objectives, specific local objectives, local area plans etc. and should be encouraged to seek independent professional advice. Prospective purchasers will not in any case have a legal interest in the land and their plans will probably not be sufficiently advanced to engage in pre-planning discussions. Pre-application consultations could of course be arranged with the new purchaser after the site has been sold and the development proposals have been advanced.

In very specific instances, for example in the case of sites of high priority for the planning authority in relation to the need for urban renewal or large green-field sites, the planning authority or the seller or auctioneer may consider it appropriate to prepare a development brief listing the authority's objectives for the site, and to make this brief available to all interested parties.

[13] Part V of the Planning and Development Acts 2000 - 2006; Implementation Issues (DEHLG, 2006)