

**Part V of the Planning
and Development Acts
2000 to 2002.**

Leitrim County Council

**Local Policy Guidance
Document**

September 2003

Introduction

The Planning and Development Act 2002 was passed into law in December 2002. The primary purpose of this Act was to amend Part V of the Planning and Development Act 2000, which deals with housing supply. This document is intended to provide some guidance in relation to Part V to assist developers, architects and others in dealing with agreements under Part V in County Leitrim. It should be read in conjunction with Part V (and other relevant sections and parts) of the Planning and Development Acts 2000 to 2002, the Planning and Development Regulations 2001 and 2003, the Guidelines issued to Planning Authorities on Part V by the Department of the Environment and Local Government in December 2000 and the implementation manual issued in February 2002 and also any relevant Circulars issued by the Department. This Document does not purport to be a legal interpretation of the relevant sections of the Acts or any of the Regulations made under the Acts.

This is a local policy document setting out the information requirements of Leitrim County Council to facilitate the pre-planning consultation process.

To what developments does Part V apply?

Part V applies to applications for permission on land zoned for residential use or a mixture of residential and other uses. As Carrick-On-Shannon is the only town in the County which has a statutory development plan with zoning provisions in place it is therefore only the area in the County to which Part V applies at present. In addition an exemption certificate from the provisions of Part V may be sought in relation to housing developments on land of 0.1 hectares or less or for four houses or less in the area covered by Carrick-On-Shannon town development plan. A copy of the Carrick-On-Shannon town plan which is part of the County Development Plan is available from this Council's Planning Section and is on the Council's website - www.leitrimcoco.ie

The Carrick Town Development Plan is currently under review.

This Council housing strategy provides that 20% of housing in any development of five or more houses will be reserved within the zoned areas of Carrick-On-Shannon. This allocation shall be divided between social and affordable housing on the basis of 10% social and 10% affordable housing. A copy of the Housing Strategy is available from the Council's Planning Section and is on the Council's website - www.leitrimcoco.ie

Options for complying with Part V:

The 2002 Act (Section 3) replaced Section 96 of the Planning Development Act, 2000 and increases the flexibility as to how an applicant for permission for development can comply with the requirements of Part V.

The following possibilities are now available:

- a) the provisions of land, units or sites within the proposed development to Leitrim County Council;
- b) the Transfer to the Council of other land within its functional area;
- c) the provision of new units on other lands within its functional area;
- d) the transfer of fully or partially serviced sites on other lands within the functional area of the Council;
- e) the transfer of new housing on fully or partially serviced sites to an approved housing body or other nominated persons,
- f) the payment of a sum of money in lieu of land, new units or sites which must be used for the provision of social and affordable housing or
- g) a combination of any of the above.

The Council is also enabled to sell, lease or exchange any land within its possession if necessary for the purposes of an overall agreement.

Where an alternative agreement to a reservation of land within the proposed development is agreed, the authority will have to receive equivalent monetary value. The amount to be paid to the Council will be agreed between the authority and the applicant and be based on the difference between the existing use value and the development value of the land with planning permission granted.

The Appendix to this document contains examples of how a calculation might be done in relation to the transfer of land, units, sites or the payment of money in lieu of the foregoing.

Pre-planning Consultations

The Council encourages developers to meet with officials of both the Council's planning and housing Sections prior to a planning application being lodged so that issues surrounding compliance with Part V can be considered at the earliest possible opportunity.

The Council, as housing authority, will seek to ensure that the potential to achieve affordability through the use of efficient lay-out, design and construction, without compromising standards or quality is maximised. The Housing Authority will seek to ensure that the proposed layout and design of housing units to be acquired for letting are suitable having regard to the authorities housing needs.

By their nature the proposals being made in relation to compliance with social/affordable housing requirements are likely to impact on the physical design of the development being applied for. It is important therefore to discuss the options for compliance as part of pre-planning discussions on the application so that any necessary design changes can be incorporated into the planning application. The local authority may be required to forward layout and design drawings to the Department of the Environment for examination /assessment and funding. Failure to address adequately issues regarding compliance with Part V in your initial planning application could result in it being invalidated.

The local authority will seek to ensure each agreement delivers the best possible result in terms of social and affordable housing supply in the County. Discussions before a planning application is made cannot bind the planning authority when they are considering whether to grant permission for an application. They are however important in resolving issues relating to your application including Part V in advance of making a planning application and will assist in ensuring that the proposals made by the applicant on how he or she will comply with the requirements of Part V will adequately address the concerns of the Council and that no unnecessary difficulty occurs in relation to compliance with Part V during the consideration of a planning application.

Where it is proposed to involve an approved housing body in the agreement, appropriate and early consultation involving the approved housing body in the pre-application meetings is necessary. The approved housing body must examine in advance all aspects of the design, layout, technical standards and costs of the housing units and any related communal facilities or amenities, which are to be the subject of a Part V agreement.

The housing department of the County Council will agree in writing with the developer the outcome of the pre-planning discussions so as to ensure that all parties have a common understanding of the nature of the proposed agreement. On confirmation of acceptance from the developer the housing department will inform the planning department so that the finalisation of the agreement would be included as a condition of a planning permission if granted.

Timing of the Agreement

The agreement made regarding compliance with Part V will generally be included as a condition of planning permission. The condition will have to be complied with before work can be commenced on the development and a condition attached to the permission relating to Part V shall state this.

All agreements should in any event be finalised within eight weeks of the final grant of permission. The developer and the Council may refer any outstanding issues in dispute to An Bord Pleanala or arbitration for settlement if agreement is not reached within this eight week period.

Appeals to An Bord Pleanala

A decision on a planning application for a permission, which is subject to a Part V condition, can be appealed to An Bord Pleanala. The Board will consider among other things the proposals for meeting the housing strategy included by the applicant for permission as part of the appeal. If the Board grant permission, the applicant for permission will then have to reach agreement with the local authority, not the Board.

Role of third parties

Third parties have no formal role in relation to the negotiation of agreements concerning Part V and have no right of appeal in relation to the making of those agreements. They are of course entitled to comment on the planning application and entitled to appeal the grant of a planning permission, which is subject to a condition concerning Part V compliance.

Re-applications

On occasion, a person may re-apply for permission on a site even where he or she has already been granted permission and reached agreement with the planning authority on the reservation of land for social and affordable housing. Agreements stay with permissions. Therefore a new agreement will apply for a subsequent application. This may involve restating the original agreement or a new agreement may have to be made as the design/scope of the development may have changed since the initial permission was granted and agreement made.

Exemptions from Part V requirements

Section 96(14) (a) of the 2000 Act (as amended by Section 3 of the Planning & Development (Amendment) Act 2002) stipulates that the provisions of Part V relating to the reservation of land for social and affordable housing shall not apply in the case of an application for planning permission for a development consisting of the provision of social housing by an approved housing body for letting (i.e under the Capital Funding Schemes for the Provision of Rental Housing by approved housing bodies) or for the provision of affordable housing.

Appendix

Examples of agreements involving the transfer of land or units or the payment of money in lieu

The following assumptions are made for the purpose of these examples: -

- The size of the part of the site which to local authority is entitled to reserve (i.e. the 20%) is 1 acre.
- The site was purchased after 25th August 1999.
- Existing Use Value (EUUV) is calculated as the current day value of the land, i.e. calculated by reference to its existing use on the date of transfer of ownership of the land to the planning authority and on the assumption that no development, other than exempted development can be carried out on the land.
- The existing use of the land is agricultural and the agricultural value is calculated at €2,500 per acre.
- Development Value i.e. value of land with planning permission is €55,000 per acre.

Example 1 – Land Transfer

If land is to be transferred, the 1 acre is transferred to the local authority who compensate the developer by paying the sum of €2,500.

Example 2 – Money in Lieu

If the financial compensation route is taken, i.e. Leitrim County Council believes that the best use of resources in this case is to accept money instead of the 1 acre of land, the developer pays a sum of €52,000 to the Council. This is the equivalent in monetary value of the transfer of the 1 acre of land on site to the Council and is calculated as being the difference between the EUUV value of €2,500 and the Development Value of €55,000 of the land with planning permission granted.

It should be noted that the calculation is **based only** on the difference between the agricultural value and the Development Value. No other values to the owner that can arise under an ordinary CPO compensation claim, e.g. severance, disturbance, compensation for improvement works etc. can be included.

Example 3 - Construction and Transfer of Units

If an alternative agreement is to be reached, e.g. construction and transfer of units or sites, the agreement entered into by the planning authority and the developer must encompass a transfer of this equivalent monetary value. So if the planning authority is seeking the construction of units the price paid to the developer for the units is calculated as being the sum of the site costs (EUV value of €2,500) plus actual construction costs (as agreed between the authority and the developer) plus profit, which is to be taken as meaning a reasonable profit, determined by reference to prices for work pertaining to competitive tenders for similar work current in the locality.