Part V of the Planning and Development Act, 2000

Implementation Issues

An Roinn Comhshaoil agus Rialtais Aitiúil
February, 2002

Introduction

Part V of the Planning and Development Act, 2000 (the Act), which deals with housing supply, was commenced on 1 November 2000. All planning authorities completed their housing strategies by the 31 July 2001 statutory deadline and the majority have varied their development plans to incorporate the strategies.

As local authorities are beginning to put the Act into operation as part of day-to-day planning control, a number of practical issues have arisen, which concern both transitional arrangements and longer term planning control issues. This document is intended to provide some guidance on these issues, to assist planning authorities, developers, architects, planners and others in dealing with housing strategies and agreements under Part V. It should be read in conjunction with Part V (and other relevant Sections and Parts) of the Act, the Planning and Development Regulations, 2001 and the Guidelines to Planning Authorities on Part V issued by this Department in December 2000 (Circular HS 4/00). It does not purport to be a legal interpretation of the relevant Sections of the Act or any of the Regulations made under it.

Not all situations which will arise over the next few months can be addressed in this guidance document. It is important to note therefore that local authorities, in making decisions on how to apply the rules set out in Part V of the Act, should act fairly and consistently between parties while seeking to ensure that the overall policy of the Part, namely to facilitate the supply of housing for all sectors of the market, is upheld.

Content

SECTION 1
DEVELOPMENT CONTROL

Outline and 'Material Contravention' Permissions

Outline permissions

Outline permissions are subject to Part V of the Act, in the same way as full planning permissions.

Anybody applying for outline permission after the incorporation of the housing strategy into the development plan should include information in their application on how they propose to comply with Part V of the Act. By their very nature, outline permissions are not as specific as full permissions. Therefore the proposals may not be as detailed as those required for full permission, but should still contain enough information to allow the planning authority to determine the application.

A condition should then be attached to the outline permission indicating that the full permission will be subject to a Part V agreement.

See Section 2, Transitional Issues, regarding outline permissions and subsequent approvals where the outline permission was applied for before the housing strategy was incorporated into the development plan.

'Material contravention' permissions

Part V of the Act applies to applications for permission on land zoned for residential use, or a mixture of residential and other uses. If the land involved is not zoned for residential/mixed residential uses, it follows that the requirement to reserve land for social and affordable housing cannot be applied to any permission granted on that land. (Also Section 96(15) - the 2-year withering rule – does not apply to permissions for developments on land not zoned for residential/mixed residential uses).

In incorporating their housing strategies into the development plan, planning authorities are required to ensure that sufficient and suitable land is zoned for residential use to meet the requirements of the housing strategy and ensure that a scarcity of such land does not occur during the period of the development plan. Good planning practice would suggest that development plans should indicate where planning permission for housing schemes for a substantial number of units will be granted and land zoned accordingly thereby ensuring that the provisions of Part V are applied fairly.

Exempt Housing Developments

Exempt developments
Under the Act, certain types of residential development are completely exempt from the requirement to comply with Part V. These are

- developments of housing for rent by an approved housing body (see Section on Involvement of the Voluntary and Co-operative Housing Sector),

- conversions of buildings to housing, where at least 50% of the external part of the building is being retained, or

- the carrying out of works to an existing house.

Exemption certificates for small scale housing developments
Provision has also been made for the exemption of single houses and small housing developments. Developments -

- of 4 or fewer dwelling units, or

- of any number of units on land of 0.2 hectares or less (approximately _ acre)

may be exempt from the social/affordable housing requirements of Part V on application to the planning authority.

In order to benefit from this exemption, a person must apply to the planning authority for a certificate stating that he or she is exempt from this requirement in respect of the proposed development. The requirements for an application form are set out in article 48 of the Planning and Development Regulations, 2001 (an example of an application form is at Appendix 1). An application for an exemption certificate must be accompanied by a statutory declaration in which the applicant must provide a statutory declaration of certain information, for example, details in relation to ownership of land. (A statutory declaration is a written declaration of facts, which must be sworn before a commissioner of oaths, a notary public or a peace commissioner). The information that must be included in the statutory declaration is set out in Section 97(5) of the Act and article 49.1 of the Planning Regulations. Applicants should consider seeking legal advice on how to prepare the statutory declaration.

In order to ensure that the issue of whether a Part V type condition should be attached to a permission will be resolved before a decision is made on an application, it is necessary to apply for the exemption certificate before an application for permission is submitted (outline or full) to the authority.

Because these are new requirements under the planning code, it may be that certain applicants, particularly those for single houses, will not be aware that either an exemption certificate must be sought or that proposals on compliance with Part V of the Act should be submitted. The Planning and Development Regulations, 2001 require evidence of an application for an exemption certificate to be submitted with an application for permission for small-scale housing developments. Where an application for permission is made in advance of these Regulations coming into force on 11 March 2002, local authorities should advise such applicants that their applications are not valid because they are incomplete and that they should submit their proposals to comply with

a condition under Section 96(2) or an exemption certificate (or copy of an application for such a certificate) before the application for permission can be processed.

Grant of exemption certificates

In the event that a planning authority does not issue an exemption certificate within 4 weeks of receipt of an application, the authority will be deemed to have issued a certificate.

Refusal of exemption certificates

The intention behind the requirement on individuals to seek exemption certificates is to prevent people making a number of planning applications for the purpose of avoiding the requirements of Part V. A person is entitled to seek an exemption certificate for the construction of 4 or fewer units, or any number of units on land of 0.2 hectares or less, without having to reach an agreement relating to the provision of social and affordable housing. However, a planning authority is entitled to refuse to issue an exemption certificate and require an agreement to be reached under Section 96 if it feels that a development site is being divided up deliberately. The Act provides that an exemption certificate in relation to a development must be refused if the applicant, or any person with whom the applicant is acting in concert-

- has been granted a certificate in respect of a residential development within the previous 5 years (and the certificate has not been revoked) within 400 meters or less of the land to which the application for an exemption certificate relates; or

- has carried out, or has been granted permission to carry out, a development consisting of the provision of 4 or fewer units or housing on land of 0.2 hectares or less, not earlier than 5 years before the date of application (this rule began on 1 November 2001) on land within 400 meters or less of the land to which the application for an exemption certificate relates.

However, if the previous development(s), taken together with the proposed development, totals less than 4 housing units or, if more than 4 units, is on less than a total of 0.2 hectares of land, the certificate may be granted.

In order to determine whether to grant or refuse a certificate, the planning authority is entitled to look at the evidence given by the applicant for the exemption certificate, for example, in relation to ownership of land. The authority may also make its own inquiries into the circumstances surrounding the making of the application for exemption.

A refusal by a planning authority to grant an exemption certificate can be appealed to the Circuit Court.

Proposals on Social and Affordable Housing to be submitted with Planning Applications

Every applicant for permission for residential development, other than for exempt residential development, must specify in the planning application how he or she proposes to meet the requirements of the housing strategy in relation to the development for which permission is being sought.

It is of course open to the applicant to propose a number of options, whether for the transfer of land or, at the option of the developer, the transfer of sites or dwelling units, to meet the requirements of the housing strategy and development plan. When the planning authority decides to grant permission for the development, it must take account of the proposals made by the developer.

The information to be included in these proposals should show how the prospective applicant for permission intends meeting the requirements of the housing strategy, having regard to:

(i) whether it is proposed to meet the social/affordable housing requirement by the transfer of land, sites or dwelling units;

(ii) the location and description of the land, sites or units to be transferred;

(iii) where-

- land is being transferred, the size of the plot (or plots), the projected cost to the authority and the basis for calculating same;
- sites are being transferred, the number it is proposed to transfer, the projected cost to the authority and the basis for calculating same;
- dwelling units are being transferred, the number and type of units (1-bed, 2-bed, 3-bed etc.) it is proposed to transfer, the projected cost to the authority and the basis for calculating same;

(iv) what infrastructural services will be provided to the lands being transferred and rights of way and connection rights thereto;

(v) how vehicular access will be provided;

(vi) pedestrian linkages and boundary treatment;

(vii) the provision of adequate public or communal open space to serve the needs of residential development on lands being transferred;

(viii) where applicable, the number of parking spaces being allocated to the proposed sites or units should be specified;

(ix) the phasing of development, how it affects transferred land, sites or units, and the impact of construction on earlier phases of the development;

(x) the types and design of any dwelling units being transferred and of units on the whole development;

(xi) how the proposed agreement might impact on the overall coherence of the development.

Under the Planning and Development Regulations, 2001 planning applications for residential development (which is not exempt) must include proposals relating to the compliance with the housing strategy, and will be rejected as invalid if they do not do so.

Pre-application discussions

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 applications. 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 Part V in advance of making a planning application. This will ensure that the proposals made by the applicant on how he or she will comply with the requirements of Part V will address the concerns of the planning authority and that no unnecessary difficulty arises during consideration of a planning application.

Transfer of land

Section 94(4)(c) of the Act states that a housing strategy shall provide as a general policy a specified percentage, not being more than 20%, of the land zoned for residential use, or mixture of residential and other uses, shall be reserved for the provision of social and affordable housing. Therefore, if land is to be transferred in order to satisfy the housing strategy, then the amount to be transferred will be calculated by reference to the percentage specified in the housing strategy. For a mixed-use development, which includes housing, the specified percentage applies to that part of the development which is residential.

Alternatively, at the option of the developer, sites or dwelling units may be transferred in order to satisfy the housing strategy provisions. The provision of units as part of a development, with the agreement of the developer, would be the preferred route from the point of view of achieving social integration and protecting the integrity of the development. The Act does not explicitly state how the percentage to be transferred is to be calculated. Local authorities should give guidance to developers on how the number of units or sites to be transferred will be calculated, for example, in the housing strategy or development plan or in the pre-planning discussions. The number of sites or units to be transferred should be equivalent to the percentage of the land which would otherwise be transferred in accordance with the housing strategy/development plan. For example, the specified percentage might be applied to the total residential floor area and converted to an appropriate number of units.

The land, sites or units must form part of the actual development to which the permission relates. The Act does not provide for the transfer of units which are not on site, as it would be contrary to one of the basic policy objectives behind the Act of ensuring social integration in housing developments.

If the planning authority, or An Bord Pleanála (the Board) on appeal, considers that the attributes (size, shape, etc) of a site do not lend themselves to agreement on the transfer of land, sites or units, a condition of the planning permission may require the authority and the applicant to agree to the payment of an amount equivalent in value to the transfer of land to the authority as if an agreement to transfer land had been concluded. It is envisaged that such cases would be the exception rather than the norm. (See Section 16 of the Guidelines).

Shared Ownership Housing
Section 98(1) of the Act specifies that affordable housing may be leased to "eligible persons" as defined in Part V of the Act. A lease in this context refers to a Shared Ownership Lease within the meaning of Section 2 of the Housing (Miscellaneous Provisions) Act, 1992.

The Shared Ownership System offers home ownership in a number of steps to those who cannot afford full ownership in one step in the traditional way. Ownership of the house is shared between the shared owner and the local authority until the shared owner acquires the full equity of the house. Eligibility for the shared ownership scheme is subject to an income eligibility test. However, approved applicants for local authority housing, tenant purchasers of local authority dwellings and tenants for more than one year of Rental Subsidy housing surrendering their dwellings are exempt from the income test.

A Shared Ownership Lease may be offered to an approved applicant for local authority housing or a person surrendering a local authority or rental subsidy dwelling in respect of a new dwelling which is part of the specified percentage reserved under Part V to meet social and affordable housing needs. In these cases, dwellings sold under the Shared Ownership Scheme may be regarded as contributing to meeting some of the social housing needs of the authority for the purposes of Part V.

Student accommodation and accommodation for the elderly
Section 95(1)(c) of the Act states that "different specific objectives may be indicated in respect of different areas" subject to the percentage of land specified in the housing strategy to be reserved under Part V not being exceeded. Such objectives could indicate, therefore, that there is no requirement for social or affordable housing in a particular part or parts of the area covered by the development plan, where it is proposed to seek the provision of student accommodation or accommodation for the elderly, or that a lower percentage than that specified in the housing strategy may instead be required.

As stated in Circular HS 9/01, issued in June 2000, local authorities should consider how the provision of student accommodation and accommodation for the elderly can be encouraged within their housing strategies. In light of this, local authorities may have included specific objectives in their housing strategies/development plans to encourage the development of such accommodation where a need had been identified in particular areas covered by their development plans.

Reaching Agreement

The Act provides that planning permissions granted for residential developments will be subject to a condition that the authority and the applicant for permission, and any person who has an ownership interest in the land, must reach agreement on the transfer of land, sites or units.

The Guidelines point out that both the authority and the developer should have a common understanding of the nature of the agreement when the decision to grant permission is made. This is particularly important as the agreement reached in relation to the reservation of lands, sites or housing can have an impact on the physical shape of the entire development. Housing units to be built or sites to be developed by an applicant and transferred to a planning authority should be included in the planning permission granted to an applicant.

Where the local authority proposes to develop land transferred by way of a Part V agreement, it will of course follow the normal procedures for local authority own development. The planning authority should indicate, insofar as possible at that stage, how the transferred land is to be developed, insofar as it is known, when an agreement is being negotiated.

Timing of the agreement

The agreement relating to the transfer of land, sites or housing units can be made simultaneously with, or after the granting of, planning permission. It must be reached before work can be commenced on the development, and a condition attached to the permission should state this.

It is not, however, necessary to defer the grant of permission until agreement on all the details relating to the transfer of land, sites or dwelling units has been reached. However, if land or sites are to be transferred, then the physical location and boundaries would need to be determined as part of the planning permission. While the proposed development on these lands need not be finalised, the planning authority should endeavour, insofar as possible, to advise the developer of its plans in relation to the land or sites. For example, this would include, if possible, a description of the houses to be developed, the layout in relation to the rest of the development, the number and size of the units (e.g. 1-bed, 2-bed etc., 1-storey, 2-storey, etc., semi-detached, terraced, etc.), an outline of the proposed finish and a possible timetable for construction.

As it is important that completion of the agreement should not delay the start of housing development, the Guidelines state that the objective should be to finalise the agreement at the latest within 8 weeks of the grant of permission. It may also be possible to conclude an agreement where some details remain to be finalised. For example, if units are to be transferred then the number, type, size and cost should be determined as part of the agreement, while matters such as identification of particular units could be left to later determination. The developer and the authority may refer any outstanding issues in dispute to the Board or an arbitrator for settlement if agreement is not reached within the 8-week period.

Appeals to the Board

A decision on a planning application for a permission which is subject to a Part V condition can be appealed to the Board. 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.

The agreement is required by a condition of the permission; it does not form part of the permission and therefore cannot be appealed in the normal way. However, the applicant can refer an agreement to the Board where he or she cannot agree on an issue (other than a dispute on the provision of housing units or sites, the level of compensation or the amount to be paid in lieu of a transfer of land) with the authority.

Role of third parties

Third parties have no formal role in relation to the negotiation of agreements concerning the transfer of land, sites or units for social and affordable housing, 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 the reservation of land, sites or units.

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 should be made for a subsequent application. This could simply involve restating the initial agreement. However, in the majority of cases it is more than likely that a new agreement would have to be made between the planning authority and the developer as the design/scope of the development may have changed since the initial permission was granted and agreement made.

Content of the Agreement

The agreement negotiated between the planning authority and the developer must identify the land, sites or units to be transferred on foot of the agreement. The phasing of the transfer of the land, sites or units should also form part of the agreement. The transfer of land/sites or units should occur under one of the following arrangements:

(a) the transfer of the ownership of land to the planning authority for the provision by them of the necessary social or affordable housing. The costs to the planning authority in this case will be calculated on the basis outlined in Section 96(6) of the Act and Section17 of the Department's Guidelines. The Act requires the transfer of land in accordance with the provisions of the housing strategy unless the developer opts to transfer units or sites. This is the 'default' position;

(b) the building and transfer on completion of a number of units, as specified and described in the agreement, to the planning authority or persons nominated by the authority, for use as social or affordable housing. A nominee can be either a person eligible for social or affordable housing or an approved body for the purposes of Section 6 of the Housing (Miscellaneous Provisions) Act, 1992, for the provision of housing for persons eligible for social or affordable housing. The costs to the planning authority in this case will be based on the site costs, calculated as if the land were transferred to the authority, and the building and attributable development costs as agreed between the authority and developer, including a reasonable commercial profit on these costs;

(c) the transfer of a specified number of partially or fully serviced sites as set out in the agreement to the planning authority or persons nominated by the authority. The costs to the planning authority in these cases will be based on the site costs, calculated as if the land were transferred to the authority, and the attributable development costs as agreed between the authority and developer, including a reasonable commercial profit on these costs.

Section 15 of the Guidelines on Part V state that, where units or developed sites are transferred, calculation of the building and development costs should take account of:

- labour, materials and plant in carrying out the physical work;
- design team fees, fire certificate fees etc.;
- planning application and possible planning appeal fees;
- any development contributions required by the planning authority or An Bord Pleanála or any connection charges required by the planning authority;
- other utility connection charges;
- overheads and financing costs.

Building and attributable development costs should be determined as an average per unit over the entire development, adjusted to reflect the varying sizes of dwelling units being provided. The purpose of this approach is to avoid abnormal costs associated with a section of the overall development being charged in full against the social or affordable housing element. Profit is to be taken as meaning a reasonable profit, determined by reference to prices for work pertaining to competitive tenders for similar work current in the locality (see Section 16 of Guidelines).

The agreement should provide for the situation in which the applicant for permission sells on all or part of a site. Any subsequent purchaser is required to comply with the planning permission and the agreement should provide that any subsequent purchaser is bound by the terms of the agreement also, if he or she wishes to proceed with the planning permission.

Involvement of the Voluntary and Co-operative Housing Sector

Part V of the Act specifically recognises a role for the voluntary and co-operative housing sector in the context of land reserved for social and affordable housing in accordance with housing strategies. Only bodies approved for the purposes of Section 6 of the Housing (Miscellaneous Provisions) Act, 1992 may be considered for involvement on land transferred under Part V of the Act. Approved housing bodies may take the form of not-for-profit voluntary and co-operative housing associations and are legally incorporated with objects concerned with the relief of housing needs and the provision and management of housing.

Voluntary and co-operative housing bodies currently provide social rented family-type accommodation using the Capital Funding Schemes for Approved Housing Bodies. They also contribute to the provision of special needs housing such as sheltered housing to meet the accommodation needs of elderly persons, persons with disabilities and other persons who require supportive housing responses to meet their needs. In addition, under the Part V provisions, voluntary and co-operative housing associations are now in a position to provide affordable units to eligible persons. Details of the procedural arrangements for the involvement of the voluntary and co-operative housing sector in the provision of affordable housing will issue at a later date.

Where ownership of land is transferred to a planning authority pursuant to an agreement attached to a planning permission, the authority should consider in each case whether a portion of the lands should be made available to an approved housing body or bodies for the provision of units for persons assessed by the authority as being in need of social housing or for persons who qualify for affordable housing in accordance with the criteria set out in Part V (Sections 18 and 19 of the Guidelines deal with the allocation of affordable housing).

Instead of the transfer of land, an agreement may provide for the building and transfer, on completion, of a specified number of units or the transfer of a specified number of fully or partially serviced sites to the planning authority or to persons nominated by the authority which includes approved housing bodies. Where the transfer of completed units of accommodation or of sites to an approved body is envisaged under such an agreement, prior consultation should take place with the relevant body (or bodies) in advance of negotiating such an agreement as such a body must be in a position to accept the transfer of the sites or units.

Where the direct transfer of units to an approved housing body is provided for, the agreement should specify the number and description of units to be transferred and the price payable for such units as determined in accordance with Section 96(3)(ii) of the Act. To ensure that the type and style of units to be developed suit their needs, the housing association should be involved at the earliest possible stage of negotiations in relation to the agreement, ideally at pre-planning stage.

From a practical point of view, it is important to ensure that the housing association is capable of providing the type and scale of housing required. In considering the involvement of individual voluntary and co-operative housing bodies, authorities should have regard to the profile of such bodies and take into account factors such as their capacity, their expertise (special needs or general family type housing providers) and a body's desired level of operation within the authority's area. In the case of special needs housing projects, linkage with local community based social service bodies operating in the area can be of advantage in the ongoing management of such projects. Some

existing approved housing bodies have already a significant expertise in the provision of these types of housing services. The selection of the housing associations is a decision to be made by the planning authority after consultations with the developer/other party to the agreement.

Where possible, having regard to requirements relating to public procurement, local authorities should avoid a public competition between approved housing bodies for involvement in Part V agreements. This can be a time consuming process and has the potential to be wasteful of resources of housing bodies (e.g. expenditure on preparing submissions and tying up staff resources of such bodies etc.).

Section 96(14)(a) of the Act states that the provision 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 only (i.e. under the Rental Subsidy Scheme or the Capital Assistance Scheme).

Affordable Housing

Preparation of a scheme

The affordable housing provided under an agreement under Part V will be allocated in accordance with a Scheme of Allocation Priorities, adopted as a reserved function by the elected members. Guidelines on a Model Scheme of Allocation Priorities were issued by this Department at the end of June 2001 (Circular HS 10/01).

In preparing a scheme of priorities, the planning authority should have regard to their experience in operating such schemes for social housing purposes (although the housing lists must be maintained separately). The Act provides that in preparing a scheme of priorities for affordable housing, planning authorities should have regard, *inter alia,* to:

- the accommodation needs of eligible persons in particular those who have not previously purchased or built a dwelling unit for their occupation or for any other purpose, i.e. first time buyers;
- the current housing circumstances of eligible persons;
- the incomes or other financial circumstances of eligible persons. Priority can be accorded to eligible persons whose income level is lower than that of other eligible persons;
- the period for which eligible persons have resided in the area of the development plan;
- whether eligible persons own dwelling units or lands in the area of the development plan or elsewhere;
- distance of affordable housing from places of employment of eligible persons;
- such other matters as the planning authority considers appropriate or as may be required in regulations. It is not intended at present to set any additional requirements in regulations.

The scheme should be fully transparent and set out clearly the basis for prioritising the allocation of affordable housing. The scheme of priorities may be reviewed, and if necessary amended, by the members of the planning authority at any time. The allocation of housing will be done by the Manager in accordance with the scheme.

Applications for and allocation of affordable housing

As the scheme for affordable housing will be separate from that for social housing, a separate application list should be established.

An applicant is eligible for Part V affordable housing where they are in need of accommodation and their income would not be adequate to meet the payments on a mortgage for the purchase of a dwelling unit to meet his or her accommodation needs because the payments calculated over the course of a year would exceed 35% of that person's annual income net of income tax and pay related social insurance. In determining the eligibility of a person, the planning authority must take into account the annual net income (i.e. gross annual income net of income tax and PRSI) of the applicant and half the annual net income of any other person who might reasonably be expected to reside with the eligible person and contribute to the mortgage payments. Applicants under the existing affordable housing scheme are likely to be eligible for affordable housing provided in accordance with a Part V agreement, although Part V affordable houses need not be restricted to those applicants.

An eligible applicant (i.e. a person on the local authority affordable housing waiting list developed under Part V) may purchase an affordable dwelling unit, made available from Part V, directly from the developer where he or she is a nominee of the authority and the purchase price has been agreed between the authority and the developer. Dwelling units provided by a developer under an agreement reached in accordance with Part V which are sold by a planning authority are eligible for subsidies available under the terms of the existing affordable housing scheme.

In the case of sites and dwellings provided under Part V, the site value will be calculated in accordance with Section 96(3)(ii) of the Act, generally at existing use value, and therefore this should be taken into account in calculating the level of site subsidy applicable in such cases. The houses may be eligible for a site subsidy of up to ¤38,100 in the administrative areas of the four Dublin local authorities and in the administrative areas of the other city councils and up to ¤31,800 in other areas. The site subsidy is not intended to meet the difference between the actual cost of providing the houses and their present day market value. In some areas it will be possible for some of the site cost to be included in the sale price of the house to the applicant. In particular, local authorities should include in the sale price of the houses such proportion of the site costs as is consistent with the need to ensure that houses are sold at an affordable price having regard to the eligibility criteria for the scheme and local housing market conditions. The site subsidy is available to meet site acquisition costs plus holding charges for a period up to seven years and site development costs. The amount of the subsidy payable will be the difference between site costs incurred in providing the houses and the amount of site cost included in the sale price of the house to the individual applicant subject to the maximum limits referred to above. The mortgage and rental subsidies, which are payable to eligible borrowers under the current Affordable Housing Scheme and Shared Ownership Scheme, respectively, will also apply in respect of houses purchased under Part V.

These houses may attract the new house grant where the purchaser is eligible for such grant

Clawback provisions

Section 20 of the Guidelines on Part V describes how the control of resale of affordable dwelling units will operate. Examples of the recoupment of profits are set out in Appendix 2 of the Guidelines.

The purchaser of an affordable house should be advised of the conditions that the planning authority has applied to the re-sale of the dwelling unit. In particular, they should be informed of the value of discount applied to the dwelling unit to make it affordable. The operation of the clawback provisions in the event of re-sale within 20 years should also be explained.

It should be noted that the clawback provisions should apply even where no financial assistance is provided to the purchaser of the affordable housing by the local authority. The point of the clawback provision is that a person who buys an affordable dwelling unit does not get a windfall profit. The current Affordable Housing Scheme and Shared Ownership Scheme (SOS) system for reclaiming subsidies for affordable units which are resold will also apply for affordable units provided under Part V where those subsidies have been provided.

SECTION 2
TRANSITIONAL ISSUES

Permissions to which Part V of the Act will apply

It is generally accepted that, if a development plan is replaced or varied, than applications for permission "in the pipeline" when the new development plan or variation comes into force are determined in accordance with the new or varied development plan. It would follow that a Part V condition could be applied to all permissions granted, whether by the planning authority or the Board, after the housing strategy is incorporated into the development plan, regardless of when the application for permission was made.

However the Act provides that, when making an application for permission, the applicant must be given an opportunity to propose how he or she will comply with the housing strategy. When the housing strategy had not yet been incorporated into the development plan, it is not possible for applicants to do so. Therefore, it has been suggested that a Part V condition cannot be applied to such a permission.

The Department is not a deciding authority for legal interpretations of this kind and cannot therefore state definitively the correct approach to be taken by the local authorities. However, the most practical and fairest policy for local authorities and the Board to adopt would be to apply a Part V type condition only to planning applications made after the housing strategy is incorporated into the development plan.

The '2-year' rule

A special time limit applies to permissions (including outline permissions) for housing, on residentially zoned land, granted on foot of applications made after 25 August, 1999, to which a Part V condition would have applied had the application been made after the inclusion of the housing strategy in the development plan. They will expire two years from the date of grant of permission (whether by the planning authority or the Board), or by 31 December 2002, whichever is later, rather than after the usual 5 years.

As this special expiry limit is in a statute, it applies even where planning permissions specifically state that permissions are valid for 5 years or a longer period. Any part of a permission relating to housing will expire where the walls of the housing have not been built to roof level (which should be given its normal meaning) within the 2-year period.

Planning authorities should keep a record of permissions which will wither after 2 years, particularly in respect of larger developments. Developers should be encouraged to re-apply for permission at an early stage and advised of the requirements of the applicable housing strategy at that time. Where no re-application has been made, inspections of developments should be arranged at the end of the 2-year period.

Repeat applications for permissions subject to the '2-year' rule

Any developer who feels that he or she will not be in a position to complete their development within the 2 years available should make an early re-application for permission, to ensure that development on site does not have to be halted while the planning application is being processed. The application should include the developer's proposals on how he or she intends to comply with the Act for the remainder of the development. Under the Planning and Development Regulations, 2001 a reduced fee is payable for these applications.

The policy behind the Act is to ensure an adequate supply of housing. It would be contrary to that policy if the supply of housing was interrupted for a period while these applications for permission are processed. Local authorities should ensure that all re-applications are processed as quickly as possible, having regard in particular to the need to ensure a continued supply of housing. When the first application was made, consideration would have been given to the planning implications of the housing development on that site, this should therefore facilitate the expeditious consideration of the repeat application.

Persons may have reached private (non-statutory) contractual arrangements relating to the reservation of social or affordable housing with local authorities prior to the housing strategy being incorporated into the relevant development plan. These private arrangements cannot substitute for compliance with the housing strategy in the event that a second application has to be made for the development. However, planning authorities should, in reaching agreement on the transfer of land or the provisions of sites or units, take account of any social and affordable housing already provided on that site / development.

Applications to change designs or modify developments

Applications for permission may be made for changes to the design of permitted residential developments, whether for changes in the design of individual structures or to increase or decrease the number of dwelling units provided. The issue as to whether a Part V condition can be applied to such applications will depend on the type of application made.

If the application is expressly for a minor change in design in a permitted residential development, for example, a change from brick to plaster, it may not be appropriate to attach a condition relating to the reservation of social and affordable housing and the planning authority should process the application as normal. In this case, if the permission is one which is subject to the 2-year period specified in Section 96(15) of the Act, that period will continue to apply to the development and the new permission will not extend the life of the original permission. However, if an application results in a change of the number of dwelling units, than this will be subject to Part V provisions.

Outline permissions and approval

Once outline permission is granted, an 'approval' must be sought before work can commence on the development. If the application for outline permission was made before the housing strategy was incorporated into the development plan, a condition requiring social and affordable housing should not be attached to a relevant outline permission. Likewise any application for approval subsequent to the grant of an outline permission would not be subject to a condition requiring social and affordable housing. Outline permissions are also subject to the 2-year rule as outlined above.

APPENDIX 1

Example
Application form for certificate of exemption from the provisions of Section 96 of the Planning and Development Act, 2000

1. Applicants name: .....

2. Applicants address: .....

Tel No: ..... **Fax No:** .....**E-mail:** .....

3. Agent: .....

4. Agents address: .....

Tel No: ..... **Fax No:** .....**E-mail:** .....

5. Address for correspondence: .....

.....

6. Number of dwelling units proposed: .....

7. Site area (hectares): .....

8. Location of proposed development: .....

9. Description of proposed development: .....

.....

NOTE: This application must be accompanied by a copy of a location map with the site clearly outlined and a statutory declaration giving the information required under Section 97(5) of the Planning and Development Act, 2000 and article 49 of the Planning and Development Regulations.

Signed: _____ Date: _____