



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



Circular PL 10/2015 and Housing Circular 36/2015

30 November 2015

To: Directors of Planning Services, and Directors of Housing Services, City and County Councils

C.c. Chief Executives of City and County Councils, An Bord Pleanála

Re: Part V - Implementation of Article 22(2)(e) of the Planning and Development Regulations 2001, as amended – Validation of Planning Applications.

Dear Director,

Further to Circular PL8/2015 and Housing Circular 33/2015, we are directed by Mr. Alan Kelly, T.D., Minister for the Environment, Community and Local Government to provide further advice to planning authorities in relation to the implementation of Article 22(2)(e) of the Planning and Development Regulations 2001, as substituted by the Planning and Development (Amendment) (No. 3) Regulations 2015 (S.I. 387 of 2015).

Background

One of the objectives of the Urban Regeneration and Housing Act 2015 is to streamline and enhance the operation of Part V of the Planning and Development Act 2000 in order to:

- (1) increase the level of social housing provided as an integral part of new housing developments, and
- (2) improve the transparency of the process by “frontloading” the Part V process at planning application stage and prior to the commencement of development.

Sections 31-33 and 35-37 of the Urban Regeneration and Housing Act 2015, which commenced on 1 September 2015, made a number of important amendments to Part V of the Planning and Development Act 2000 (as amended). These amendments make changes to the options available in relation to discharging the Part V obligations of planning applicants and the manner in which the Part V element is calculated. Also, the Planning and Development (Amendment) (No. 3) Regulations 2015 made by Mr. Paudie Coffey, T.D., Minister of State at this Department with special responsibility for Housing and Planning, on 10 September 10 2015, and which came into effect on the same day, have introduced changes in terms of what is required to be submitted with a planning application for residential or mixed use development for the purpose of fulfilling the new Part V requirements.

In line with the objective of frontloading the Part V process and making it more transparent as an integral and early part of the planning application process, the amended Planning and Development Regulations place additional requirements on applicants to submit details as to how they propose to comply with a condition on a grant of permission pursuant to section 96 of the Act (Part V condition).

In broad terms, such details to be submitted with relevant planning applications must include:

- (a) How the applicant intends to discharge their Part V obligation as regards a selection of a preferred option from the options available under legislation;
- (b) Details in relation to the housing units or land to be provided; and
- (c) Financial aspects.

Guidance on the implementation of the amended Regulations is set out at Appendix A. The intention here is that a more detailed Part V proposal (which will reflect the discussions that will likely have taken place in pre-application consultation) will, when forwarded to the local authority's Housing Section, commence the process of interaction

and engagement, which will ultimately conclude with the Part V agreement. The implementation of the amended Regulations will therefore facilitate the making of that agreement at the earliest point.

Assisting Applicants

There is a critical need to increase supply of new housing in the main urban areas of the country. Local authorities have a major and central role to play in working pro-actively with landowners and developers in ensuring that good quality housing in suitable locations comes forward in a timely fashion and in a manner that meets the needs of the community, including social housing provision through Part V as an integral part of new housing development.

Planning authorities must work pro-actively with applicants for new housing developments, and their agents, to assist them with any queries they have about the new requirements above.

Planning authorities will be aware that section 247 of the Planning and Development Act 2000 requires that applicants and their agents are advised at the pre-planning application consultation of the procedures involved in considering a planning application, including any requirements of the permission regulations. Obviously this will include alerting applicants to, and explaining the requirements of, Article 22(2)(e) of the Planning and Development Regulations in applicable cases. As stated in the *Development Management Guidelines for Planning Authorities (2007)*, planning authorities must ensure that expertise from both the housing and planning sections is represented at relevant section 247 pre-planning application consultations, in addition to expertise from any other section which may be relevant to the overall proposal concerned.

Only in the cases where an applicant fails to submit the required minimum detail as set out in the Appendix below should a planning authority invalidate the application on the grounds of non-compliance with Article 22(2)(e).

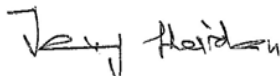
In this regard it should also be noted that the Development Management Guidelines (at paragraph 3.10) recommend an approach, in the case of all planning applications, whereby

if a planning application contains a minor defect, the applicant would be contacted and offered the opportunity, within a very tight timeframe, to rectify the defect (the application would be regarded as valid in the interim period), as opposed to invalidating the application.

Planning authorities should ensure that staff members who are responsible for validating planning applications are familiar with the Guidance Note attached in Appendix A.

For further queries in relation to this circular please contact:

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APPENDIX A

Guidance on Part V - Planning Applications and Validation

This note is intended to provide planning authorities with guidance on implementing the requirements of Article 22(2)(e) of the Planning and Development Regulations 2001, as amended, when validating a planning application, so that a consistent approach can be adopted by planning authorities.

Planning and Development Regulations 2001, as amended – Article 22(2)(e)

Article 22(2)(e), as substituted by Article 3 of the Planning and Development (Amendment) (No. 3) Regulations 2015, now reads:

(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 Planning 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.

The amended Article 22(2)(e) now imposes specific requirements in relation to the details required to be submitted at planning application stage as to how the applicant proposes to comply with a Part V condition, if planning permission is granted. Where these details are not supplied, the planning application cannot be validated, in accordance with Article 26, as it fails to comply with Article 22.

There are three broad items that need to be included in a planning application regarding a Part V proposal, as follows:

1. How the applicant intends to discharge his/her Part V obligation as regards a selection of a preferred option from the options available under legislation;
2. Details in relation to the units or land to be provided; and
3. Financial aspects.

Additional advice on these aspects is set out below.

(1) Option(s) selected from section 96(3) of the Planning and Development Act:

In requiring the applicant to give details of how he or she proposes to comply with a condition requiring that a Part V agreement be entered into under section 96(2) of the Act, Article 22(2)(e) of the Planning and Development Regulations clearly requires that the applicant specify which of the options available under **section 96(3)** of the Act (as amended by the Urban Regeneration and Housing Act 2015) he/she proposes. i.e.:

1. Transfer to the ownership of the planning 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 planning 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)*).

3. Transfer to the ownership of the planning authority, or persons nominated by the authority, of housing units on any other land in the functional area of the planning authority (*section 96(3) paragraph (b)(iv)*).
4. Grant a lease of housing units to the planning authority, or persons nominated by the authority, either on the site subject to the application or in any other area within the functional area of the planning authority (*section 96(3) paragraph (b)(iva)*).
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)*).
6. A combination of the options set out at paragraphs (b)(i), (b)(iv) and (b)(iva) of section 96(3) i.e. not involving a transfer of the ownership of land (*section 96(3) paragraph (b)(viii)*).

(2) Details in relation to the Proposed Option(s) selected - Article 22(2)(e)(i):

Having specified which of the options available under section 96(3) of the Act he or she proposes to take, the applicant is then required to provide details of the proposed option, as selected. The information to be provided will vary depending on the option selected. **Table 1** below sets out the indicative information required under Article 22(2)(e) sub-paragraph (i) for the option selected.

Table 1 - Indicative information required under Article 22(2)(e)(i)

Option	Minimum Information Required
1. Transfer of land	A map, to the same scale as the site location map, indicating the part or parts of the site proposed for transfer to the planning authority.
2. Transfer of Housing on the application site	A list of the units and types of housing within the proposed development that are proposed to be transferred to the planning authority.
3. Transfer of Housing off-Site	A list of the units and types of housing elsewhere in the functional area of the planning authority that are proposed to be transferred, and the indicative location of such units.
4. Lease of Housing (on or off-site)	A list of the units and types of housing within the proposed development or elsewhere in the functional area of the planning authority that it is proposed to lease, and, in the case of proposed units outside the application site, the indicative location of such units.
5. Combination of Option 1 and any other options or options	Appropriate combination of the minimum information requirements above.
6. Combination of any of Options 2 - 4	Appropriate combination of the minimum information requirements above.

(3) Estimated Costs, Calculations and Methodology - Article 22(2)(e)(ii):

This requires the applicant to provide the **estimated** overall cost, to the planning authority, of the option(s) selected, and methodology used in arriving at such costs.

The minimum information expected under sub-paragraph (ii) of Article 22(2)(e) for each of the options is set out below.

Option 1 – Land:

Estimated cost: A statement of the estimated existing use value of the land proposed for transfer.

Calculations: This will be the existing use value of the entire site and the percentage of that value which is the percentage of the site proposed that is

proposed to be transferred. (The value of the site for the purpose of the Part V agreement will be determined at the date of grant of the relevant planning permission). Note: Land proposed should be capable of delivering the appropriate percentage of housing, i.e. up to 10% as is specified in the housing strategy.

Methodology: As stated above, existing use value.

Option 2 – Housing on application site:

Estimated cost: A single figure for the estimated total cost to the planning authority.

Calculations: The number of units and the cost per unit. Where multiple unit types are proposed,—

- (i) the cost per unit type proposed; and
- (ii) the number of each type of unit proposed.

Methodology: This will be informed by input costs including site costs, construction, relevant development costs, builder's profit, fees and associated costs.

It will not be necessary for the applicant at initial application stage to provide a detailed break-down the costs for each of the various construction cost components, although applicants may of course do so.

In relation to methodology, applicants may indicate use of the methodology set out in Table 2 below. Where the applicant has used a different methodology, details of the different methodology should be set out.

Table 2 below will also provide an indicative checklist of the items to inform the determination of the ultimate calculations which will have to be agreed with the planning authority in the context of the Part V agreement prior to the lodgment of the Commencement Notice.

Table 2: Methodology

Cost Component	Methodology
1. Construction costs	Estimated by reference to the expected costs of the quantities and materials for the development, excluding VAT and builder's profit.
2. Development costs	Includes component costs of the development, including design fees, service connections, development contributions, site investigation, financing charges, legal expenses, structural guarantee, planning fees certification of compliance and supporting open space and infrastructure costs as apportioned to the units.
3. Profit on Costs	Appropriate percentage to be agreed with the planning authority by reference to the likely cost that would be incurred by the authority, had it engaged a builder directly to construct the units.
4. Land costs	Determined by estimated valuation of the existing use value on the date the planning permission is expected to be granted.
5. VAT	Determined by reference to the prevailing VAT rate at the time an agreement is signed.
Total Estimated Cost	Sum of Items 1 to 6

Option 3 – Housing off application site:

Estimated cost: A statement of the estimated cost to the planning authority of the proposal.

Calculations: As under Option 2 above, i.e. the number of each type of unit proposed to be transferred and the cost of each type of unit.

Methodology: Where it is proposed to build the units, as under Option 2 above. Where it is proposed that houses will be purchased rather than constructed, the methodology may simply be the estimated cost of acquiring suitable housing. However, it should be noted that the price

to be paid should not be more than what it would have cost the planning authority to purchase equivalent housing on-site.

Option 4 – Lease:

Estimated cost: The estimated total amount to be discounted from the combined monthly lease rent for the unit(s) proposed.

Calculations/

Methodology: The estimated market rent, the discount proposed to reflect the responsibilities taken on by the planning authority under the lease and the Part V discount proposed should be set out. The Part V discount proposed should be such that the arrangement is no less beneficial to the planning authority than if the Part V requirement were fulfilled by means of the transfer of land under paragraph 3(a) of section 96 of the Act. This means that the value of the discount to the planning authority must be no less than the “net monetary value” of the land in question, that is, the market value of the land to be transferred on the day that planning permission is granted, less the existing use value of the land on that date.

Option 5 and Option 6 – Combinations of Options 1 to 4:

Estimated cost: The cost for each of the options being selected should be listed.

Calculations: As under the relevant option above.

Methodology: As under the relevant options above.

Conclusion

It is not realistic at planning application stage for an applicant to provide detailed actual costs for a development for which permission has not yet been granted, for which a detailed design has not yet been settled and for which site valuations are not required until the date of the grant of planning permission.

Accordingly, as is made clear above, it is **estimated costs** that are required to be submitted with the planning application.

Planning authorities should also recommend to prospective applicants, through the section 247 consultation process, that the estimated costs provided with the planning application should be as realistic as possible. Once details of the Part V proposal are lodged with the planning application, this will commence the formal consideration of Part V issues for the development by the authority. While the proposal and estimated costs will be subject to discussion during the course of the development of the section 96 agreement, the more realistic the initial proposal made by the applicant at planning application stage, the more quickly the Part V proposal can be agreed, and, where permission is granted, the more quickly construction can commence to meet urgent supply requirements.