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

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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.