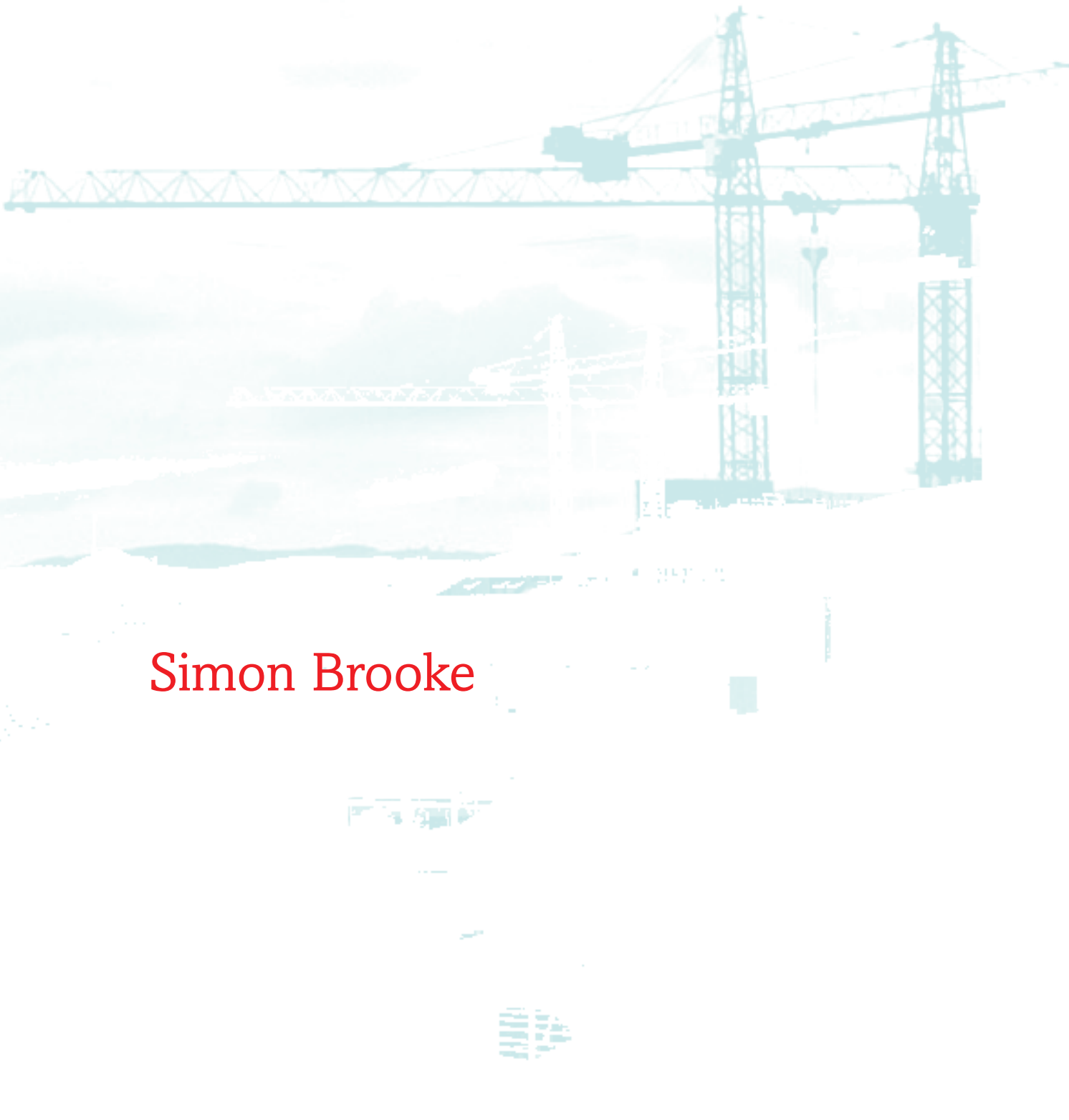


# Building for Inclusion?

Housing Output and Part V of the Irish  
Planning and Development System

Simon Brooke





# Contents

Acknowledgements	iv
About the Author	iv
Glossary and Acronyms	v
List of Tables	v
Preface	vi
Foreword	viii
1. Key Findings	1
2. Introducing this Study	3
3. The Origins of Part V of the Planning and Development Acts 2000-2004	5
4. Part V: A Beginner's Guide	11
5. Part V: Practitioner Perspectives and Opinion	14
6. Part V and Housing Output: Social and Affordable Housing Action Plans	25
7. Discussion and Recommendations	31
Appendix 1	43
References	44
Endnotes	45

# Acknowledgements

This study would not have been possible without the active engagement of the people interviewed who willingly answered my long list of questions. In addition thanks are due to all those who offered informal advice and assistance.

An expert advisory group was established to offer guidance, and to comment on the validity and reliability of the methodology and research findings. It comprised the following members:

Hubert Fitzpatrick	Director, Irish Home Builders Association
Tony Boland	Principal Officer, Department of the Environment, Heritage and Local Government
Dr Michelle Norris	School of Applied Social Science, University College Dublin
Dr Declan Redmond	School of Geography, Planning and Environmental Policy, University College Dublin
Caroline McGrath	Director of Advocacy, Focus Ireland
Dáithí Downey	Policy Analyst, Focus Ireland

The expert advisory group met three times, and separately to the meetings members of the group provided the researcher with invaluable insights into different aspects of this research.

Thanks are also due to the members of Focus Ireland's Research Advisory Group for their assistance and support during the research process. The members are:

Dr Valerie Richardson (Chairperson)  
Prof Damian Hannon  
Sr Stanislaus Kennedy  
Mr Ciaran McCullagh  
Dr Patricia O'Hara

Finally, special thanks to Mr Dáithí Downey for his work managing this project and preparing this document for publication, to Ms Claire Hickey (formerly Research Manager at Focus Ireland) who helped initiate this research and to Ms Niamh Humphries and Ms Lucy Taylor who assisted the final edit prior to publication. Naturally, everyone but myself is absolved from responsibility for errors.

# About the Author

Simon Brooke is a housing and social policy consultant. He has worked for many years in the areas of social housing and homelessness in London and Dublin, and has extensive experience of research and evaluations in these fields. He is chair of the board of Clúid Housing Association and lectures part-time at the School of Social Work and Social Policy, Trinity College Dublin.

# Glossary and Acronyms

Part V	Part V of the Planning and Development Acts 2000-2004
Turnkey Development	Housing that is designed and built by a private developer and then purchased by a local authority or housing association for use as social and/or affordable housing.
DoEHLG	Department of the Environment, Heritage and Local Government
SAHAP	Social and Affordable Housing Action Plan
LAAHN	Local Authority Assessment of Housing Need
IHBA	Irish Home Builders Association
CIF	Construction Industry Federation
IAVI	Irish Auctioneers and Valuers Institute
AHP	Affordable Homes Partnership
NGO	Non Governmental Organisation
GDA	Greater Dublin Area
Note:	Throughout this report the word ‘developer’ is used as a generic term to include private development agencies including landowners and/or builders. Where a distinction is made between these actors it is signalled.

# List of Tables

Table 1	Planned social housing output 2004-2008
Table 2	Planned social and affordable housing output under Part V compared with actual output 2004/05
Table 3	Planned social and affordable housing output under Part V 2004-2008



# Preface

Focus Ireland's vision is that everyone has a right to a place they can call home. Access to appropriate, safe and affordable housing is central to achieving this vision. Housing is a fundamental human need and how housing is provided influences all aspects of society, from community development to public health and individual capacity to participate in economic and social life. Housing may promote social inclusion, or conversely can serve to cause or deepen divisions in society. This reality is witnessed daily by Focus Ireland in its work with people at risk of and experiencing homelessness, as is the challenge of providing housing in a way that facilitates, empowers and supports people to create and sustain home.

As a national voluntary organisation working to provide long-term and integrated housing solutions to people at risk of and experiencing homelessness, Focus Ireland welcomed the introduction of Part V of the Planning and Development Act, 2000. In allowing for up to 20 per cent of land in most new developments to be reserved for social and affordable housing, we felt Part V positively orientated Irish housing provision towards mixed tenure development. We also felt it was a pragmatic response to the problem of increasingly scarce development land for social and affordable housing.

However, conspicuously low levels of Part V housing output since 2000 left many wondering whether in fact it can make any significant contribution to the provision of social and affordable housing in Ireland. This research report goes some way to answering this concern. It examines the context and implementation of Part V of the Planning and Development Acts since 2000, investigates the factors which have impacted on output to date and in particular looks at the potential for the future provision of social housing through Part V agreements.

The importance of ensuring Part V works to boost social and affordable housing is critical.

Yet the picture of Part V housing output that emerges from this research is a mixed one. Negotiating and implementing Part V agreements requires local authorities and developers to work together in new ways that overcome their distinct and different cultures and orientations. This new way of working has not been without difficulties and this research identifies a number of areas where change is required if Part V is to work more effectively.

On a positive note, this research found a willingness among key actors to address the challenging issue of increasing social and affordable housing output using Part V agreements. As a result, some very practical and important suggestions emerged over the course of the research and these helped inform the recommendations we make in this report. So while output to date has been limited, this research indicates that Part V is a viable development option for increasing social and affordable housing output in the near future.

Early in 2006 Focus Ireland launched a five year strategy, central to which is our aim to provide an additional 800 homes to people moving out of homelessness by 2010. Meeting our customers' needs and that of others in Irish society who struggle to access social and affordable housing requires bold, innovative and effective ways of creating housing in sustainable communities. Part V is a significant contribution in rising to this challenge and requires a willingness by everyone concerned to make it truly effective.

In turn, local authorities, developers, housing associations and local and national political leaders must engage to support improved social and affordable housing provision. This means we must all step outside our comfort zones, be prepared to enter new ways of working to challenge orthodoxies and find new ways of delivering the housing that will make real our vision that everyone has a place they can all home.



Declan Jones  
Chief Executive





# Foreword

## Building for Inclusion?

The Irish housing market fails to provide housing access for all in need. This impacts on the extent and experience of exclusion and homelessness in our society - a reality that is gaining wider recognition and understanding today.

The National Economic and Social Council's report, *Housing in Ireland: Performance and Policy* states that 'in modern liberal democracies, the market for owner-occupied and rental accommodation will not, on its own, meet the housing needs of those on low incomes or with special housing needs' (2004: 12).

More importantly, the possibility of state failure must also be factored into our analysis of the most appropriate response to market failures to build for inclusion. The potential for Part V to fail as a mechanism that will redress housing market failure and ensure access to housing for lower income households must be recognised as a risk. However, this research shows it is a risk that can also be managed and reduced over time.

The aim of Irish housing policy is:

"to enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment, and, as far as possible, at the tenure of its choice".  
DoELG (1995: 4)

However, there are a number of key questions central to how we resolve Irish housing market failures known to be restricting the realisation of this overall aim. For example, is the way in which the Irish housing market operates simply a mirror of divisions between the rich and poor? Or is the way it operates an actual driver of inequality, segregation and exclusion? Also, how should the state act to intervene in the operation of the Irish housing system? Especially, how do state actions address today's market failure to provide access to housing for all those who need it? How does the state ensure the housing market builds for inclusion?

These questions helped direct this research study as it set out to investigate recent experiences of using the Irish planning code to assist in dealing with Ireland's growing crisis of social and affordable housing provision.

Other factors influenced the realisation of the need for this study. In particular, a keen awareness on our part that the conventional direct provision of social rented housing by local authorities and housing associations is not meeting the current demand for social housing.



The shortage of suitable development land available for social housing is worsened by the significant difficulties facing local authorities when competing on the open market for development land.

Problems of housing affordability in Ireland and well-established housing tenure patterns typified by social and physical segregation between owner occupied and social rental housing were other important influences on this study. So too is the nascent body of evidence that mixed housing tenure developments can generate significant social, economic and community advantages over single-tenure social housing estates (Norris, 2005).

Whilst to date housing output under the newly codified planning system is unspectacular, enough housing has been produced and experience gathered to justify conducting this investigation.

In short then, this is a pathfinder study that examines the implementation of the new planning codes and questions how well they address a key issue about the operation of our housing market to include or to exclude.

## **The Planning and Development Act, 2000**

When passed into law the Planning and Development Act, 2000 was heralded as 'a major enhancement in the scope and relevance of the Irish planning code'. It brought Ireland very much into line with advanced planning thought within the EU (see European Commission, 1999) and was a signal that planning had 'finally been elevated to a higher plateau within the decision making machinery of the state and its sub-national structures' (Bannon, 2004: 11).

The Act provided for a hierarchy of plans from local area plans to development plans and regional planning guidelines, but it also contained many innovations. In particular, the preparation of housing strategies as part of each local authority development plan, powers to enable the designation of strategic development zones and the use of the planning code to provide social and affordable housing.

## **Part V**

Development control and management over social and affordable housing output was enhanced through the provisions of Part V of the Act that allowed a specified percentage (not more than 20 per cent) of land zoned for residential and other uses, to be reserved for social and affordable housing provision.

This part of the Act is characterised by its supporters as a landmark step that modernises the planning system, improves housing delivery and helps reduce undue social segregation in new housing developments. It represents a community and planning gain or return against the windfall profits arising from the development of land.

To its opponents it is decried as a draconian measure that contributes to further house price inflation and represents an onerous financial burden transferred onto private purchasers.

The constitutionality of this part of the Act was subsequently challenged but the Irish Supreme Court ruling of August 2000 ensured it passed into law. However, shortly after the Irish general election of 2002, the agreed *Programme for Government* for the Fianna Fáil/ Progressive Democrat coalition government included a commitment to review the Planning and Development Act, 2000.

A Bill was subsequently published with significant amendments, including the introduction of off-site provision and direct cash payments in lieu of social and affordable housing provision. Amendments also included the replacement of the two-year withering rule that applied to planning permissions obtained between August 1999 and the date of the adoption of a local authority's housing strategy. The amending Bill was passed into law after considerable public and political debate.

Many expert commentators expressed deep pessimism at this outcome. For example, Bannon argued Irish society has 'effectively rejected any significant attempt to broaden the scope of planning to embrace a socially inclusive dimension' (2005: 307).

Despite the changes of the amending Bill, the basic principle of the original Act remains in place and local authorities retain the right to insist on a transfer of up to 20 per cent of land for social and affordable housing provision on all qualifying planning permissions.

Indeed this report's author has established findings that arguably offer a more optimistic scenario than previously envisaged and suggest that a number of practical changes can be made to the overall operation of Part V to significantly boost social and affordable housing output. These changes are considered in more detail in the final section of this report and form the basis of recommendations arising.

## Anatomy of a Boom

This report is published in the 10th consecutive year of Ireland's housing boom. Over this decade official estimates put the rate of new housing output at approximately 500,000 units of accommodation (just over one third of the total dwelling stock). With the population in Ireland having grown by 15 per cent and the number of new households up by 41 per cent over the same period, the Irish housing market continues to play a game of catch-up between housing supply and demand.

The initial speed of the supply response to greater demand was slow and demonstrates just how inelastic housing supply in Ireland is. Only in the last two years has there been a noticeable improvement in the overall rate of output. Housing supply in 2005 is twice that in 1996. Approximately 80,954 units of accommodation were built in 2005, compared with 34,000 units in 1996.

Despite greater recent supply, double digit price inflation continues into 2006 producing another step-up in costs for the aspiring first time buyer. Today the average price of a new house in Dublin is over €350,000 while nationally the figure is somewhat lower at €275,000.

Particularly since 2000, low eurozone interest rates have combined with positive economic growth, a competitive mortgage finance regime, net immigration, strong rental yields and the expectation of further future price increases to produce two distinct boom time effects.

## Boom Time Effects

The first boom time effect is the continued growth in housing wealth for households in owner-occupation prior to or at the beginning of the boom. This wealth effect has generated greater consumption and investment options for these households.

Many are re-financing their mortgages to release significant equity for further investment in Irish residential property, thus providing a further boon to price inflation.

The second boom time effect is that as prices rise an increasing number of households are priced out of the open market for owner occupation. The housing choices of lower income households seeking owner occupation or rental housing are significantly curtailed or have disappeared to the extent that they are at a greater risk of homelessness and exclusion. These households are now looking to the state to provide them with access to social and affordable housing.

## Unmet Housing Need

As a result, the extent of future unmet housing need in Ireland is deepening and indeed broadening to include income categories who might not ordinarily seek access to housing via social or affordable housing provision.

This research considered projections of future housing need and does not find them as complete or watertight as might be the case. For example, demand for social housing is registered by way of application to a local authority waiting list system that undergoes a formal assessment by the local authority every three years. The most recent assessment for 2005 indicates a fall in national waiting lists by 9.5 per cent to approximately 43,000 households (from 48,000 in 2002).

It's arguable that the 2005 figure is an underestimate of overall general housing need, given that many households living on or just below the average annual income and with an unmet housing need do not qualify for social housing. This is because their income (low as it is) still places them outside the income means-test used to determine eligibility for social housing but also puts them a long way from purchasing a house on the open market.

These are the households whose housing need is due to be met through the provision of affordable owner occupied housing, yet estimating demand for affordable housing from within these intermediate households remains an ambiguous affair. Demand for social housing is established and known, yet the same cannot be equally said for affordable housing. This issue is explored in more detail in the body of the report.

## Social Housing Output Since 2000

The Irish National Development Plan (2000-2006) commits to a strategic programme of planned capital investment in social and affordable housing to the value of €6bn. This investment was due to return a total of 35,500 new local authority houses between 2000 and 2006 and a target of 4,000 units per year from the voluntary and co-operative housing sector.

By the end of September 2005, only 20,600 local authority units had been provided, leaving a shortfall of close to 15,000 units that is unlikely to be fully redressed by this year's output.

Furthermore, the output from the voluntary and co-operative sector remains below target at approximately 1,600 units per year. Indeed, social housing output as a percentage of overall annual output has fallen from around 10 per cent in 2002, to 8.9 per cent in 2003, 6.7 per cent in 2004 and 5.8 per cent in 2005.

This research study found a number of reasons for the persistent shortfall. They range across problems of land acquisition, bureaucratic blockages, and inadequate and untimely investment alongside inefficiencies that have resulted in under-spending on annual budgets.

Notwithstanding these, the introduction of Part V and new planning tools alongside improved multi-annual capital funding offers a new opportunity to redress the balance in favour of greater social housing output. But this cannot be done in isolation. Such is the backlog of demand for social housing that Part V housing output must be required to be additional to and not a substitute for direct provision of social housing.

## Part V and Social Segregation

Access to social and affordable housing mitigates social exclusion and segregation in society for households at risk of homelessness and with unmet housing needs. This study indicates this basic understanding is not as well recognised by the actors engaged in Part V development as it could be. Of particular importance are the social and spatial concerns of Part V to ensure sustainable housing development that avoids undue social segregation.

Previously, the spatial segregation of social housing helped generate a residential social geography that reinforced broader inequalities. More recently, market

performance and local political pressure against social and affordable development bolsters these trends.

This is especially the case for land and sites that are arguably most suitable for social and affordable housing i.e. sites located close to public services and amenities (schools and hospitals, leisure centres, libraries etc) with good public transport provision.

Policy to deal with these issues remains weak, yet this research offers a platform for positive change. A key research finding suggests the development of a shared understanding of these issues among the key actors is beginning, and a willingness to find solutions is emerging.

## Building Sustainable Communities

*Building Sustainable Communities* is both the title and aim of the new policy statement for housing issued by the Irish government in December 2005. At the time of writing more details are awaited, yet what is known is that the key objective of this policy 'is to promote the conditions whereby the maximum number of people can access affordable accommodation through private provision'. The policy also recognises that a range of supports are required 'to assist those who cannot access such accommodation from their own resources' (2005:1).

This pathfinder research is an early indication of support for the argument that building sustainable communities requires the integration of the principle of mixed-tenure development into housing provision at the local level. It is increasingly the case that mixed-tenure development can secure significant social, economic and community advantages over single – tenure social housing estates.

Part V development should therefore support the delivery of sustainable communities through the provision of a variety of housing types and a diversity of housing tenures that reduce social segregation.

This means that Part V development ensures quality design and high building standards are achieved for a variety of dwelling types for single and family occupation including homes for sale, self-built homes, shared ownership, market rented and socially rented homes.

Reducing the risk of failure and increasing the possibility of successful social and affordable housing provision will require more than just the consideration of this research's findings and recommendations for policy and practice.

It will require that we continue to pursue an open and honest debate – public as well as political – about the housing futures of all households with an unmet housing need. This is a debate that must answer what we consider to be a key question. Namely, what will

be done to prevent future homelessness and ensure a fair and equitable housing system delivers housing access for all? It is hoped this research will contribute to and enliven this debate.

#### **Focus Ireland 2006**









# 1. Key Findings

This study draws upon one-to-one interviews with representatives from local authorities, developers, and housing associations; and analysis of secondary data sources. 'Part V' refers to Part V of the Planning and Development Acts 2000 – 2004 which amongst other things allows for up to 20 per cent of land in most new developments to be reserved for social and affordable housing.

Key findings from the study are as follows:

## □ Two cultures

The main players involved in the operation of Part V are local authorities and developers; and in some cases housing associations. Local authorities and developers have different and sometimes conflicting priorities and constraints. Despite this, both local authorities and developers agreed that for Part V to operate successfully, negotiations need to take place in an atmosphere of mutual trust, respect, and a joint willingness to be realistic. There is evidence that at least in some cases the major players are beginning to have a better understanding of each others' position.

## □ Local authority staff resources

It is beyond the scope of this study to assess in detail the extent to which local authority staff resources in housing departments are adequate. However, it is clear that as currently organised, some local authority housing departments do not have staff resources necessary to carry out their full range of powers and duties.

## □ Local authority organisational structures

All local authorities in this study with significant existing or planned Part V activity agreed that a dedicated Part V team was the most appropriate structure for ensuring effective delivery of social and affordable housing under Part V.

## □ Local authority interpretation of legislation

Where a developer builds housing units and transfers their ownership to the local authority, the legislation is specific about the formula to be used when agreeing payments by the local authority. However, not all local authorities follow this formula; two of the seven local authorities interviewed used a simpler approach. This is problematic because it is contrary to the legislation and guidance from the DoEHLG; in addition it may lead to inconsistencies in price setting of affordable housing both within and between local authorities. It may also threaten the development of an atmosphere of mutual trust and respect referred to above.

#### □ **Pre-planning discussions**

Pre-planning discussions between the local authority, developer, and housing association as appropriate, are essential if a Part V agreement that is consistent with the local authority's housing strategy is to be achieved. These discussions should include discussion of the option agreed for compliance with Part V; confirmation, if relevant, of the involvement of a housing association; and where appropriate the number, size, type, and location of social and affordable units.

#### □ **Standard house construction costs**

Using agreed standard house construction costs has the potential to significantly simplify and shorten negotiations on costs of constructing dwellings. A workable system could be devised that would at the very least provide a starting point for Part V negotiations and might well be applicable in its entirety.

#### □ **Social and Affordable Housing Action Plans (SAHAPs)**

The concept of planning housing provision at the level of detail required by SAHAPs is to be welcomed. However SAHAPs do not represent the total activity under Part V, and it is extremely difficult to predict or determine future social and affordable housing output under Part V. Comparing planned output under SAHAPs in 2004 with actual output from the Housing Statistics Bulletin for that year shows that direct provision by both local authorities and housing associations was extremely close to the projections in the plans. Local authority output under Part V was less than one third of the planned output, and housing association output was less than a quarter of planned output.

#### □ **Housing strategies**

The requirement on planning authorities to estimate the housing supply needed to meet the needs of the entire population is a very welcome development. In the light of the considerable uncertainties that exist in carrying out this task, the strategies should be reviewed regularly against fresh sources of data and other external developments. It is extremely difficult to devise a methodology that will estimate the future demand for affordable housing with any accuracy. Estimating the demand for social housing has a higher confidence level, but even here there is scope for considerable improvement in the principal source of data; the Local Authority Assessment of Housing Need.

#### □ **Local authority approval from the DoEHLG for social housing**

Currently local authorities must have prior approval from the DoEHLG for most social housing schemes. Some local authorities find themselves in a position where they have to apply for retrospective approval, because if they used the normal procedure the ensuing delay would make it impossible to negotiate a Part V agreement. This discredits the entire approval system and it is in need of a radical overhaul.

#### □ **Housing association approval from the DoEHLG for social housing**

Housing associations must have prior approval of funding for all housing schemes. However, delays in processing applications for funding from housing associations are such that many housing schemes are completed before approval has been granted. As in the case of local authorities, this discredits the entire approval system for housing associations and it too is in need of radical change.

#### □ **Apartments and management fees**

Local authorities and housing associations are extremely concerned about the impact of management fees payable by occupiers for the routine maintenance and cyclical maintenance of their dwellings. Housing associations in particular state that they cannot afford to pay management fees out of the income they receive from rented housing. If existing arrangements are not changed radically, housing associations will simply not be able to provide social rented housing in apartments. That would have a serious negative impact on Part V activity. This issue is in urgent need of attention.

## 2. Introducing this Study

Part V of the Planning and Development Acts 2000 – 2004 is commonly associated with one aspect of housing provision in Ireland, that is reserving up to 20 per cent of land in new developments for social and affordable housing. However, its overall vision is much broader than this.

Its overarching aim is ‘to encourage and facilitate a level of housing supply to meet the housing needs of all sectors of the population...’ (DoEHLG, 2000a). Three key elements can be identified as being established to meet this overall aim. Part V:

- ❑ Requires planning authorities to develop housing strategies that are an integral part of their Development Plan. The aim of the strategies includes enabling planning authorities to quantify the future need for housing in different tenures and of different types.
- ❑ Places a statutory obligation on planning authorities to ensure that sufficient land is zoned for housing to meet projected requirements.
- ❑ Enables planning authorities to insert in their housing strategy a provision that up to 20 per cent of the land zoned for housing will be reserved for social and affordable housing.

Focus Ireland commissioned this research study to investigate the implementation of Part V of the Planning and Development Acts 2000 - 2004, and the output of social and affordable housing units delivered to date using this provision. A number of interconnecting aims were established for the research. These were:

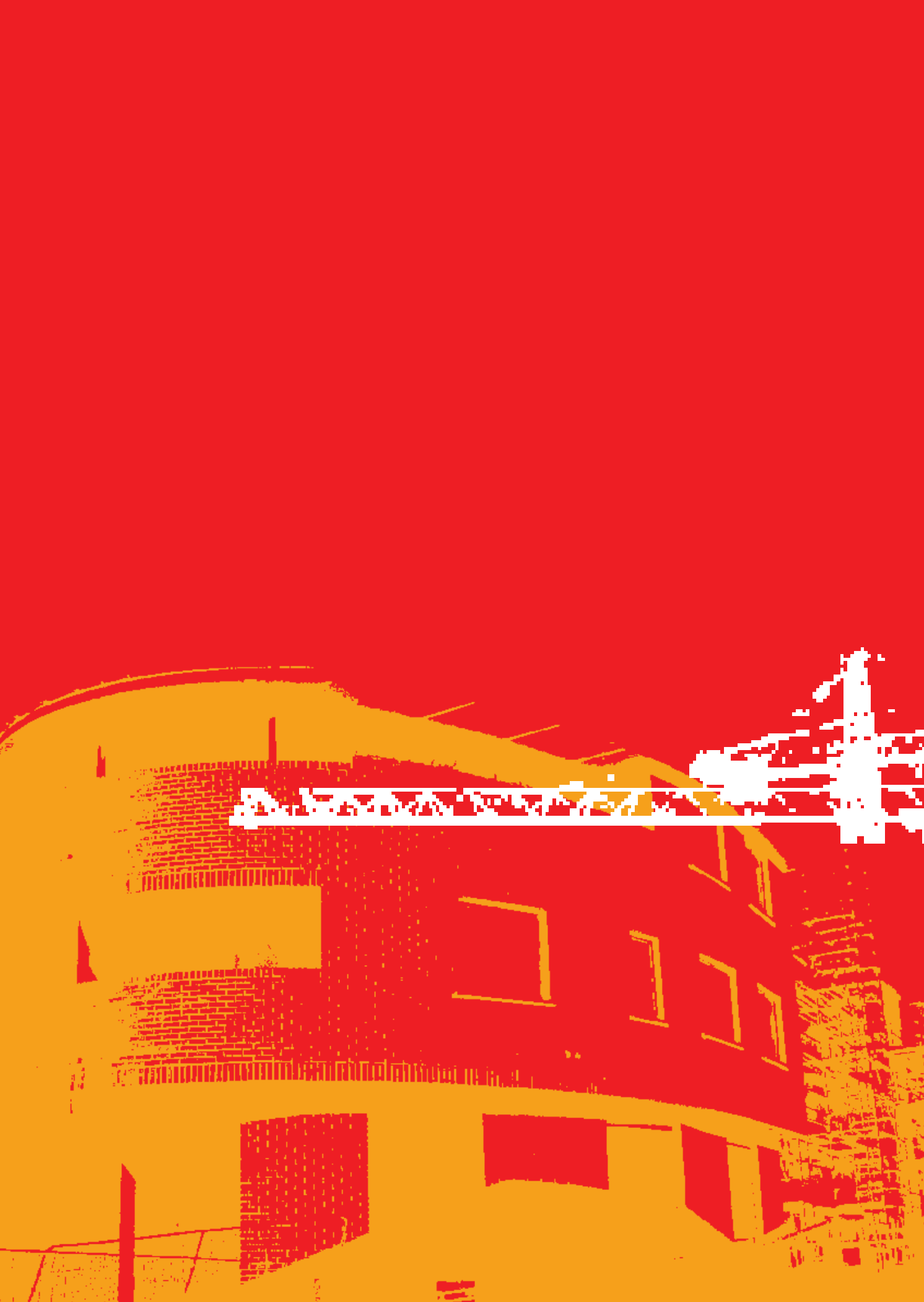
1. To investigate the background to the introduction of Part V of the Planning and Development Acts 2000 - 2004 and place its introduction within the broader context of housing need and homelessness.
2. To review existing strategy documents including the Housing Strategies and Social and Affordable Housing Action Plans for their statement of targets and methods of delivery.

3. To assess how many social units have been delivered and future anticipated output of Part V social units and to compare and contrast social housing output against affordable housing output under Part V.
4. To analyse how Part V is being implemented among a sample of local authority housing departments and voluntary housing providers.
5. To assess how Part V, as a delivery mechanism for social and affordable housing is perceived by the various actors in the field of housing development.
6. To offer preliminary findings on the implementation of Part V and the barriers to the delivery of social housing units to date.

Accordingly the methodology agreed to support the research enquiry included a combination of primary qualitative enquiry and analysis of secondary data sources. In short, the researcher undertook a desk review of existing strategy and policy documents including, but not limited to, the Planning and Development Act, 2000 (amended 2002), housing strategies, and SAHAPs. In addition a number of one-to-one interviews were undertaken using a semi-structured interview schedule, with relevant department representatives from seven local authorities, with five developers (in addition a sixth developer provided written response) and with three housing associations.

Part V was and remains somewhat controversial legislation. Details of its origins, the surrounding debate, and its progress through the Oireachtas are recounted in the next section of this study. After setting out a concise beginner's guide to how Part V works, this study presents a detailed examination of practitioner perspective and opinion on Part V from the perspective of the development industry, local government sector and approved NGO housing bodies. Future housing output under Part V and the role of Social and Affordable Housing Action Plans in its delivery are examined in the following section. The study concludes with a considered discussion of key research findings, presents a summary conclusion and sets out recommendations for future action.





# 3. The Origins of Part V of the Planning and Developments Acts 2000-2004

The origins of the Planning and Development Acts 2000 - 2004 lie in a number of related developments within the Irish housing system.

- In 1998, a year before the Planning and Development Bill 1999 was introduced, annual house price inflation was running at 22.5 per cent and showed no signs of slowing down. Whilst there was a continuing steady increase in supply, Peter Bacon's first report on the housing market (Bacon, McCabe and Murphy, 1998) produced high estimates for future housing demand, suggesting that house price inflation would continue at a high level for some time to come. A consequence of rising house prices was increasing numbers of households which had aspired to own their own homes being priced out of the market, or losing out to investors who, anticipating continuing rising prices, were buying new houses with enthusiasm. The first affordable housing scheme, which aimed to help lower income households to buy their own homes, was introduced in 1999, but only 40 affordable houses were completed in that year.
- The private rented sector was characterised by sharply rising rents and concerns from some quarters about increasing levels of evictions and poor physical conditions which particularly effected people on low incomes. On foot of Peter Bacon's second report (Bacon and McCabe, 1999) the government established the Commission on the Private Rented Residential Sector.
- Social rented housing output was stagnant, whilst in 1999 the local authority assessment of housing need showed that 39,176 households were

registered on local authority housing waiting lists, an increase of a massive 43 per cent over the previous assessment made in 1996. The gap between need and supply was widening fast.

Part V of the Planning and Development Bill 1999 (introduced in the Seanad in August 1999), was designed, amongst other things, to address these concerns. When he detailed the provisions of Part V in the Seanad at the second reading of the Bill, the Minister for the Environment, Noel Dempsey T.D. argued that Part V underpinned the two planks of Irish housing policy – facilitating people to buy their own homes, and the provision of social rented housing. The Minister went on to say:

*Part V ... introduces a major new dimension to planning legislation and contains the most radical and probably the most contentious provisions of the Bill.<sup>2</sup>*

His response to initial criticism of the Bill was both direct and robust:

*I must stress that the Government is not shifting its housing responsibilities onto developers. What we are trying to achieve is to bring about a situation where the shortage of social and affordable housing for the lower and middle-income sections of the community, is addressed in the context of the planning system when decisions are being made about the zoning of land for housing development.*

*Builders will not be required to build houses and hand them over gratis to the local authority, as some have suggested. However landowners and developers will know that a pre-set share of land designated for housing development will have to be reserved for social and affordable housing. The share to be so reserved must be based on actual assessments of the existing and projected needs by local authorities in their areas and is not an arbitrary figure, as some have suggested.*

Furthermore, on the contentious issue of betterment and compensation for landowners whose land was zoned for residential or mixed-use development, the Minister mounted a strong defence of setting compensation at the existing use value of the land concerned prior to zoning.

*The rationale for setting the compensation at this level is that the zoning of land is in the*

grant of the local authority. This is done as part of the development plan, the so-called environmental contract with the community, according to the Supreme Court. A decision by the local authority to zone land for residential development could increase the value of that land between ten and one hundred fold. No one is entitled to have his or her land rezoned. Therefore, it is perfectly reasonable that the greater community, through the local authority, should be able to reap for the public good a relatively small proportion of the gain they confer on the landowner. Furthermore, local authorities should be able to ensure that by their decision on zoning they are not severely restricting their capacity to provide social or affordable housing for those who need it.

This Ministerial opinion set out clearly the then government's commitment to the principle of planning gain, whereby the zoning of land, which has immediate and substantial gain to land owners, is accompanied by benefits for the community as a whole. In other words, the developer is expected to pass on some of the considerable benefits obtained from land zoning to the wider community.

## Public Debate

Before debate on the Bill had formally begun in the Oireachtas, Part V and its proposed provisions had become the subject of heated public debate. For example, the private house building industry through its representative body, The Irish Home Builders Association (IHBA), campaigned strongly against Part V.<sup>3</sup> In addition, the principle of reserving a proportion of land for social and affordable housing was strongly opposed by the Irish Construction Industry Federation (CIF). Its Director was reported in the *Irish Times* (18/11/1999) as stating that:

*...to insist on an element of social housing "on every or any residential development, without reference to the circumstances" was both inappropriate and unworkable.*

*"the resources of private industry will be in part diverted" to meeting the needs of those on council housing lists. This was an abrogation of local government responsibilities and would reduce the supply of private housing needs, he argued. The result, said the CIF, would be:*

- ❑ *A reduction in the supply of new private housing.*
- ❑ *More house buyers turning to the second-hand market which currently accounts of seven out of 10 house loans.*
- ❑ *Increases in the prices of second-hand houses which will in turn impact on land and new house prices.<sup>4</sup>*

Writing in the same vein in its publication *Property Valuer* (Autumn, 1999), the IAVI Chief Executive argued that Part V was 'a clever ploy by the DoE [Department of Environment] to pass the buck from its original target, the builders, to a less well represented group, existing landowners'<sup>5</sup>. He argued that by setting compensation at existing use value, 'which will represent a small fraction of the true value of the land', 'the DoE are trying to side step the need for proper compensation.'

His argument predicted that landowners would become discouraged from selling if they thought they would not receive the true value, and owners who held land with planning permission that Part V did not apply to, would anticipate future price hikes, and thus hold on to their land for longer prior to allowing development. Arguing that 'housing supply will be constrained by all of these considerations, in contrast with government policy' he went further and argued against the actual principle of affordable housing, which even with a claw-back provision represented 'a major tax-free gift which grows as the value of the property grows'. 'Why should any citizen be gifted such vast sums of money?' he asked.

In parallel, while lobbyists on behalf of Irish developers were warning of dire consequences should Part V come into law, September 1999 saw the publication of new guidelines on residential density (Government of Ireland, 1999). These guidelines increased significantly the number of dwellings that could be built per hectare. As public debate on the issues developed, these higher density opportunities would (in the view of some) offset to a significant degree the impact of the provisions of Part V on the development industry.

It is perhaps worth noting at this point that throughout the passage of the bill on its way to becoming legislation, public statements in favour of its provisions were noticeably thin on the ground. In the end, and despite continued opposition from the construction lobby, the Government held firm and the Planning and Development Act 2000 was passed on 15th June 2000 with all-party support.



## Constitutionality

A number of commentators had questioned the constitutionality of Part V, on the basis that it would be an infringement of property rights as protected by Article 40.3.2 of the Irish Constitution, *Bunreacht na hÉireann* (Government of Ireland, 1937). However, another part of the Constitution (Article 43) states that the exercise of private property rights 'ought, in civil society, to be regulated by the principles of social justice' and that the State 'may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good'. These issues were also raised by senators and TDs during the passage of the Bill in the Oireachtas and were soon to become the basis for an investigation into property rights by the All-Party Oireachtas Committee on the Constitution.

In February 2000, An Taoiseach Bertie Ahern T.D. wrote to the then chairman of the All-Party Oireachtas Committee suggesting that the Committee, when it came to examine the personal and property rights aspects of the Constitution, should consider the need for updating provisions which pertain to planning controls and infrastructural development.

The Committee became particularly concerned to establish whether the balance struck in the Articles relating to property between the rights of the individual and the exigencies of the common good

was such as to impose 'unnecessary impediments to legislation which would either control or otherwise regulate the price of building land on the one hand or which would seek to eliminate many of the obstacles to the speedy roll-out of major infrastructural projects on the other' (Government of Ireland, 2004: 7).

So it was no great surprise when on 30th June 2000 the President, after consulting the Council of State, referred Part V to the Supreme Court to rule on its constitutionality. The Supreme Court duly considered the matter in July 2000.

The legal team engaged to argue in favour of unconstitutionality argued that whilst it was right that the Executive and legislature should attempt to deal with the problem of house prices, it should not be done by requiring landowners to bear a disproportionate share of the financial cost of this policy. The legal team also argued that the legislation contained too much discretion, which would lead to unjust and anomalous consequences; and that the method for assessing compensation was 'in some respects arbitrary and unfair'<sup>6</sup>.

The Attorney General, arguing in favour of constitutionality, said that rising house prices had meant that some people needed affordable housing to bridge the gap between what they could afford and what was available on the open market. On the issue of compensation, he argued that Part V was

doing no more than requiring the landowner, if he wished to develop the land, to surrender some part of the enhanced value of his property that had resulted from the operation of a planning regime intended for the benefit of the community as a whole.

The court ruled on 28th August 2000 that none of the provisions of Part V of the Bill were repugnant to the Constitution, and Part V was commenced on 1st November 2000.

## More Public Debate

The Supreme Court's judgement was publicly welcomed by a number of housing organisations including the umbrella body for Irish housing associations, the Irish Council for Social Housing (see Irish Times, 28/8/2000). Nonetheless, the passing of the Planning and Development Act 2000 into law did not lead to an end of the debate and interest groups continued to press the Government for change.

The Irish Home Builders Association (IHBA) focused its attention on the so-called 'withering rule' under which any planning permission granted after Part V came into force but before a housing strategy was in place, would 'wither' i.e. expire at the end of December 2002 instead of remaining valid for the normal five year period. Notably, any dwelling built up to roof level by this date avoided being 'withered'. The following extract from the IHBA's newsletter, the *Home Builder* (Nov., 2001) illustrates their position:

*The IHBA has consistently raised its concerns that this restrictive and draconian measure will have on builders' ability to maintain a steady supply of housing in coming years.*

*The restriction appears to have been introduced to ensure:*

- *that developers/builders would not submit applications ahead of their intended date so as to avoid social and affordable housing requirements;*
- *as a means of ensuring the immediate development of lands with planning permission.<sup>7</sup>*

The IHBA also warned that the implementation of Part V could lead to house prices rising by a further 24 per cent. However, the organisation was also to indicate a more pragmatic position, stating that it

would be 'prepared to go along with the measures' if only to confirm the basis of its opinion on expected outcomes (see Irish Times, 29/8/2000).

Whilst the IHBA did not campaign against the legislation on the basis of the perceived social stigma associated with Irish social housing provision, the Irish Auctioneers and Valuers Institute (IAVI) had no such inhibitions.

Speaking at a IAVI function in June 2001, the IAVI President raised the issue and noted 'that the Irish house-buying public, given the choice, will elect not to live beside social housing' (Younge, 2001). He went on to say:

*'The Irish public is not ready to have social housing foisted on private housing developments. "Micro-socialism" is perhaps an apt term for ensuring that those who cannot, in reality, afford a private house in a development will nevertheless be given one - at the direct expense of the other private buyers in that development.'*

*'The public doesn't mind assisting those in need through macro taxation policies, but it cannot accept that individual buyers in private estates should pay a higher price for their property, simply to assist a next-door neighbour acquire a similar property at a price that is less than market value'.*

## A Slow Start

Under section 96 (15) of the Act, 2000 any planning permissions granted before the planning authority had completed a housing strategy would not have Part V obligations (although they would 'wither' i.e. expire at the end of 2002). Therefore many planning permissions without Part V continued to be granted. Furthermore development of housing is a lengthy business and the time between receiving planning permission and completion of a housing scheme is likely to be a minimum of two years.

Following the publication of the Planning and Development Bill, there was a substantial increase in planning applications<sup>8</sup> in 1999 and again in 2000. This was followed by a fall in 2001 and another fall in 2002. This volatility was interpreted by some commentators as being due to developers attempting to maximise their planning permissions for which Part V would not apply. However the



developer lobby maintained the increase prior to 2000 was due to changes in the building regulations and design matters associated with access for disabled persons (*Home Builder*, Nov. 2001)<sup>9</sup>.

In reality, housing output under Part V did not get off the ground at all until 2002 and only then in a very small way. But before then, the original legislation would be amended very significantly.

## The Planning and Development (Amendment) Act 2002

Following the General Election in 2002, when the Fianna Fáil/Progressive Democrats coalition was returned to power, the new Government published *An Agreed Programme for Government between Fianna Fáil and the Progressive Democrats*<sup>10</sup>. The new *Programme for Government* included the following commitments, at the end of a short section on housing:

*We will review the operation of the Planning and Development Act to ensure that it is meeting the objectives for which it was enacted with particular reference to social and affordable housing.*

*In order to minimise the disruption to supply we will ensure that where planning applications become necessary because of the two year withering requirement, set maximum application and appeals timings will apply.*

The announcement of the review, which was carried out in the then Department of the Environment and Local Government, was greeted with quiet satisfaction by the construction lobby and with some trepidation by the social housing lobby. Many commentators were extremely sceptical of the announcement, since very few, if any, planning permissions with a Part V requirement had been processed. Arguably, the experience of operating Part V, which would have been expected to inform a review of legislation, was virtually non-existent.

Following the completion of the review (which was not made public) the Planning and Development (Amendment) Bill 2002 was published on 5th December 2002. It contained three significant amendments to the existing Part V legislation.

- It introduced a number of options for incorporation into a Part V agreement in addition to those set out in the Planning and Development Act 2000.
- Under the Planning and Development Act 2000, any planning permission that Part V would normally have applied to, that was granted after 25th August 1999 but before the local authority had adopted the housing strategy, would last until 31st December 2002 or for two years from the date of the grant of permission, whichever was longer. Planning permission would expire for those houses within the development for which the external walls had not been built by the relevant date. This so-called 'withering rule' was replaced in the 2002 Planning and Development (Amendment) Act so that permissions granted during the above 'window' when Part V did not apply, would last the normal five years instead of 'withering'. In addition, for those houses within the development whose 'life was being restored', i.e. external walls had not been built to roof level, a levy would be payable to the local authority to fund the provision of social and affordable housing.
- Housing associations were to be given the power to enter into shared ownership schemes and affordable housing schemes.

The 2002 Bill went further than the commitment in the *Programme for Government* that promised only to streamline re-applications for planning permission where the withering rule applied. Instead the 2002 Bill proposed abandoning completely the withering requirement.

However, this problem had been anticipated by the newly appointed Minister for the Environment and Local Government, Mr Martin Cullen, T.D. who said in reply to a question in the Dáil on 28th February 2002:

*I encourage any developer who believes that he or she will not be in a position to build out their development within the two years available to make an early reapplication for permission. This will ensure development on-site does not have to be halted while the planning application is being processed. In addition, local authorities are being advised to process all such re-applications as quickly as possible to avoid any interruption to the supply of housing while these applications for permission are processed. As consideration*

*will already have been given to the planning implications of a housing development on that site when the first application was made, this should facilitate the speedy consideration of the repeat application. In addition, I have reduced the fee for making a repeat application to one quarter of the normal fee.*

*I will keep the matter of the processing of re-applications under review and if it appears necessary to do so, will consider use of other relevant powers under the Planning and Development Act to ensure these applications are processed quickly.*

This reply strongly suggests that the Government's own thinking – in place before the actual review was conducted – was to retain the withering rule, but ensure that re-applications for planning permission would be streamlined.

The publication of the 2002 Bill was given a 'cautious welcome' by IHBA (although at the same time its director claimed it would cost 'in the region of €350 million per annum')<sup>11</sup>. The 2002 Bill was roundly condemned by approved NGO housing bodies and housing campaigners with interest in social housing. For example, Focus Ireland stated:

*In our opinion, this new Bill fundamentally contradicts the original purpose of this hard-fought-for legislation - namely to reduce undue social segregation in new housing provision (Irish Times, 13/12/2002).*

Threshold joined in, taking a slightly different line and publicly stated that the Bill:

*'...further undermines social housing programmes, represents a bonus to builders and developers and sacrifices the needs of vulnerable households'. ... The Minister argues that by caving in he is retrieving 80,000 new homes over two years. He does not mention that by the same token he must be giving up on 15,000 new social and affordable homes. Without the withering rule Part V is essentially postponed for at least three years. (Irish Times, 17/12/2002)*

While it is not always easy to understand some of the reactions to publication of the Planning and Development (Amendment) Bill 2002, it is important to remember that despite the incorporation of additional options for the Part V agreement, the

transfer of 20 per cent of land remained the default condition, so local authorities would be in a position to enforce this if they desired.

A publicly stated 'cautious welcome' normally equates to private whoops of joy, and whilst the Bill meant that over 70,000 homes would be built in developments where Part V would not apply, it was only delaying the introduction of Part V. Arguably, the 'cautious welcome' given by the IHBA was perhaps a pragmatic response in the knowledge that they had got as much as they could expect. They clearly hoped that the inclusion of additional options, in particular off-site social and affordable housing and compensation, would be attractive to local authorities.

From the other side, and of course with the benefit of hindsight, the reaction also seemed somewhat disproportionate. It was of course true that the end of the withering rule would effectively delay the introduction of Part V by perhaps two years, and potentially lose some 14,000 social and affordable homes. However, the basic principle was not abandoned, since as stated above, local authorities were in a position if they so wished to insist on a transfer of 20 per cent of the land.

The passage of the Planning and Development (Amendment) Act 2002 was short and stormy. It was opposed in the Dáil by a united opposition that included Fine Gael, Labour, the Green Party, and Sinn Féin. The government guillotined the reading of the Bill amidst stormy scenes and it was passed into law on Christmas Eve 2002.



## 4. Part V: A Beginner's Guide

This section comprises a concise guide to the provisions of Part V of the Planning and Development Acts 2000 – 2004.

### Housing Strategies

Each planning authority shall prepare a housing strategy that will be part of its Development Plan and shall ensure the Development Plan provides for the housing of the existing and future population of the area. The housing strategy must take account of:

- ❑ The need for housing from households included in the local authority assessment of housing need;
- ❑ The need to ensure that housing is available for households with different levels of income;
- ❑ The need for different house types and sizes to match the requirements of the local population; and
- ❑ The need to counteract undue segregation in housing between persons of different social backgrounds.

The housing strategy must include an estimate of the amount of social and affordable housing required. It must also state that a specified percentage (not more than 20 per cent) of land zoned for residential or a mix of residential and other uses, shall be reserved for social and affordable housing. The planning authority (i.e the local authority) must ensure that there is enough land zoned residential to meet the housing needs identified in the housing strategy.

### Planning Permission

A planning authority can require that as a condition of a grant of planning permission, the applicant enters into an agreement with the planning authority concerning the development of the specified percentage of land reserved for social and affordable housing as set out in the housing strategy.

This agreement may provide for any of the following development options:

- ❑ The transfer of the ownership of up to 20 per cent of the land to the planning authority or a housing association for social and affordable housing. This is the 'default' option.
- ❑ The building of social and affordable houses and their transfer to the planning authority or a housing association. The price will be calculated



by adding the cost of the land transferred to the planning authority based on the existing use value plus attributable development costs as agreed between the authority and the developer, including reasonable profit on the costs<sup>12</sup>.

- ☐ The transfer of a number of fully or partially serviced sites to the planning authority.
- ☐ The transfer of other land within the planning authority area.
- ☐ The building and transfer of social and affordable houses on other land within the planning authority area.
- ☐ The transfer of serviced or partially serviced sites on other land within the planning authority area.
- ☐ Payment of an amount specified in the agreement.
- ☐ A combination of options.

If any of the options other than the first is agreed to, the aggregate monetary value of the transfer of property or payment must be equivalent to the monetary value of the land that the local authority would receive if the first option were agreed to.

Where ownership of land is transferred to a planning authority, the authority must pay compensation as follows:

- ☐ In the case of land purchased before 25th August 1999 the actual price paid for the land plus interest.
- ☐ In the case of land purchased after this date, the compensation is equal to the value of the land calculated by reference to its existing use on the date of transfer of ownership of the land. This is done on the basis that 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.

An example may assist the reader to make sense of this. If the land in question has no building on it, then the existing use value will be its agricultural value, regardless of its location, since the compensation is calculated on the basis that it would be unlawful to develop any housing on that land. Similarly, if on the land in question there is a house, then the compensation would be based on

the current market value of the house and its land on the basis that no further development would be allowed.

Where houses or sites are transferred the price shall be determined by the compensation paid for the land as calculated above, plus the building and attributable development costs as agreed between the authority and the developer, including reasonable profit on the costs.

In considering whether to enter into an agreement under any option other than the 'default' option above, the planning authority shall consider:

- ☐ Whether the agreement will contribute to the achievement of the housing strategy;
- ☐ Whether the agreement will be the best use of resources available;
- ☐ The need to counteract undue segregation between people of different social backgrounds;
- ☐ Whether the agreement will be in accordance with the authority's development plan; and
- ☐ How quickly the agreement will deliver social and affordable housing.

For the purpose of making the agreement, the planning authority shall have regard to:

- ☐ Proper planning and sustainable development;
- ☐ The housing strategy;
- ☐ The overall coherence of the development;
- ☐ The views of the applicant in relation to the impact of the agreement on the development.

Disputes may be referred to An Bord Pleanála or the property arbitrator, depending on the area of dispute. If an agreement is not entered into within eight weeks of planning permission being granted, the applicant may refer the matter to An Bord Pleanála or the property arbitrator depending on the circumstances.

Under the Planning and Development Act 2000, any planning permission that Part V would normally have applied to, that was granted after 25th August 1999 but before the local authority had adopted the housing strategy, would last until 31st December 2002 or for two years from the date of the grant of permission, whichever was longer. Planning permission would expire for those dwellings within the development for which the external walls had not been built by the relevant date.

This so-called 'withering rule' was replaced in the 2002 Planning and Development (Amendment) Act so that permissions granted during the above 'window' when Part V did not apply, would last the normal five years instead of 'withering'. In addition, for those houses within the development whose 'life was being restored' (i.e. external walls had not been built to roof level), a levy would be payable to the local authority to fund the provision of social and affordable housing.

Any planning permission granted after Part V came into force but before a housing strategy is in place would be subject to a levy paid to the local authority instead of having to enter into a Part V agreement as outlined above. Part V does not apply to developments of fewer than four houses or for housing on land of 0.1 hectares or less.

Part V also requires each planning authority to establish a scheme which determines the order of priority to be accorded to people eligible for social and affordable housing. Part V also sets out a mechanism for a claw-back, which requires that anyone reselling their affordable home within 20 years of purchasing it, will pay a proportion of the capital gain to the planning authority.

Part V also gives housing associations the power to enter into shared ownership schemes and affordable housing schemes.



# 5. Part V: Practitioner Perspectives and Opinion

This section presents a comprehensive summary of practitioner perspectives and opinion on Part V based on interview responses from key informants. It is important to note that the number of organisations interviewed for this study was necessarily small due to the level of resources available, and is not a representative sample. However, generally there was a high level of consistency within each of the three groups: local authorities, developers, and housing associations. Where there were significant differences between informants in each group this is indicated, otherwise it can be assumed that the response represents the views of all or nearly all the relevant informants.

The responses are presented thematically to start with, in order that the reader can readily compare responses from members of different groups to the same issue. The element of Part V investigated in this research is to a large extent concerned with the operation of the development control system, and many of the issues raised come under this heading. Following this, other issues that are relevant only to one group, are presented by group.

## Overall Opinion of Part V

### Local authorities

Local authorities were strongly supportive of the principle of Part V, primarily because they saw it as a mechanism for providing an additional source of social and affordable housing.

### Developers

All developers interviewed took a very pragmatic view of Part V. This is not to say that they welcomed it; none of them did, but they accepted its existence.

*We accept it's a fact of life; the legislation is here to stay. It's a question of making it work at this stage, making the best of a bad thing.  
I won't say we welcome it. It's there, it's part of the Planning Act and we have to deal with it.*

### Housing associations

Housing associations were very positive about Part V, seeing it as presenting increased development opportunities for them.

## Groups' Perceptions of One Another

### Local authorities' perception of developers

Overall local authorities were generally well disposed toward developers. Several said that they were getting more realistic.

*Generally they are reasonable. They know they have to comply (with Part V).*

*They now accept that Part V is here to stay. The problem up to now was developers believing that if they continued to resist it, Part V would disappear.*

*Developers were holding back hoping that there would be major changes or it (Part V) would be abandoned altogether.*

Most local authorities agreed that whilst most developers accepted affordable housing, many (although not all) did not want social housing in their developments.

More than one pointed out that developers are a heterogeneous group.

*On the one hand you have some guys who know it (Part V) is out there, who accept it and are used to dealing with local authorities. They'll come to us and say 'we know we have to give you 10 or 15 houses in this development, how do you want them, how can we make this work?' They don't like it, but it's there and they accept that it's there. They are the easy ones to deal with. Other guys are looking for ways to minimise the impact of Part V. Their initial proposal might include*

*putting social housing down a cul-de-sac, detached from the rest of the development; or a lower spec house type with different appearances. You have guys who are trying to get out of it entirely by making a cash contribution, or looking for another way out.*

## Local authorities' perception of housing associations

Overall, the local authorities interviewed had a positive perception of housing associations, and most envisaged them playing a significant role in the provision of social housing under Part V, although two local authorities saw this role as being restricted to special needs housing. Two authorities anticipated that housing associations would provide almost all social housing in their area under Part V. Particular strengths identified included:

- They were dedicated housing organisations;
- They were better resourced than local authorities; and
- They were better at managing apartments.

Several local authorities said they would be amenable to a joint approach by a developer and a housing association, although they would reserve the right to make another arrangement for the provision of social and affordable housing if it were more appropriate.

It is perhaps worth adding here that this positive view of housing associations is not shared by all local authorities. Some local authorities assert that housing associations tend to 'cherry pick' their tenants when allocating tenancies (that is, they are said to choose 'good' tenants over those who are perceived to be 'difficult' tenants). This is strongly disputed by the housing associations' umbrella group the Irish Council for Social Housing. In some local authorities councillors are unenthusiastic about social housing provision that they do not have direct control over; and some local authorities are less enthusiastic about housing associations because they see the lack of a tenant purchase options as significantly reducing the attractiveness of housing association provision. Further discussion of these issues is beyond the scope of this study, but it is widely agreed that overall, local authorities are significantly better disposed towards housing associations than was the case in the 1990s (see Brooke, 2001; Mullins, 2003).

Notwithstanding this, the examination of the Social

and Affordable Housing Action Plans (SAHAPs) presented in the next section of this report will indicate that many local authorities do not envisage a significant role for housing associations in the provision of social or affordable housing under Part V.

## Developers' perception of local authorities

Developer views on local authorities were expressed trenchantly. Overall practitioner perceptions of local authorities as recounted during keynote interviews can be summarised as follows:

- Local authorities were responsible for huge delays in reaching Part V agreements. This issue was repeatedly emphasised and influenced developer responses to other questions.
- Local authorities were not good managers of social housing.
- Local authorities were under-resourced, and there was a high turnover of staff. As one Developer commented:

*With one local authority we're into the third set of people we're dealing with in less than a year. Each time have to re-educate them about how the scheme works.*

- Interpretation of the law and practice varied between local authorities. The variation in the price that local authorities were prepared to pay for an affordable house was commonly instanced as an example.
- Local authorities were too inflexible in their interpretation of the legislation, in particular concerning the choice of options for delivery of Part V. To quote one interviewee directly:

*I think one of the weaknesses of the Act is that it leaves too many options open to the local authority. For example, when a developer offers an off-site proposal, sometimes the local authority won't even consider it.*

## Developers' perception of housing associations

Three developers said that they would prefer a housing association to provide the social housing on their development rather than a local authority. One developer said he would prefer a local authority while another did not express a preference although he had worked with a housing association; and one had no experience of working with housing associations, but was open to the concept.

Developers who preferred housing associations said they were better managers of housing than local authorities; the fact that they are dedicated housing organisations rather than engaging in multiple diverse areas of activity was a strong advantage; and the fact that they are free from political control was also an advantage.

*Housing associations will liaise with you initially and they will give you advice about what they want – type of units, layout etc – they will sit down with the design team when you're planning these things and give helpful advice – and that's something I don't think you'd get from a local authority.*

## Housing associations' perception of local authorities

Housing associations' views of local authorities may be summarised as follows:

- They are under-resourced.
- Although they have responsibility for regulation of some aspects of housing association activity they do not have the capacity to carry out this function.
- Housing schemes involving housing associations received a lower priority by the various local authority departments that are involved than housing schemes which are to be provided by the local authority. This contributes to delays in getting approval.
- There is a huge variation in local authority expertise.

## Housing associations' perception of developers

As would be expected, housing associations have a very pragmatic view of developers, acknowledging that they are not a homogenous group, with a wide range of understanding of social housing issues.

The importance of establishing an effective working relationship with a developer was emphasised.

## Developers and Local Authorities: Contrasting Cultures?

### Local authorities

A number of local authorities referred to differences between the public and private sectors which impacted on the negotiations between themselves and developers.

*People who work for local authorities and the civil service wouldn't be seen as risk takers ... traditionally our background would be to be cautious. We are looking after public money and [the] public wouldn't want us to take risks. Whereas developers are used to taking risks and making quick snap decisions that might save them money, or risk a loss if they think down the road they might make a gain. The two sectors are being thrown together and expected to get on. It's probably not a happy marriage for a lot of people.*

Whilst some local authorities had experience of negotiating with developers, in relation to turnkey developments for example; others acknowledged they'd had relatively little experience and that it was different from putting out a tender to build their own units.

*A lot [of developers] are far cuter than you are. You'd be a fool to think that you can out-negotiate them.*

### Developers

A number of developers referred to a difference in ethos between local authorities and themselves.

*There are inefficiencies throughout the public authorities.*

*If I ran my business like that I'd be out of business very quickly.*

*Delays don't cost Local Authorities in the same way they cost the private sector.*

## Cautious optimism

However there was also an acknowledgement by some that the process was improving. One local authority official said:

*Department guidelines were vague and there was a lot of learning on the job as you went along. Early on you'd be presented with something that didn't seem to fit and you'd be talking to lots of people across the country to arrive at a solution that would fit within the parameters. But I would think that as time goes on, my experience would show, that as experience has been built up, we're beginning to deal with things more efficiently.*

Some developers also shared this perspective.

*Maybe we'll get to a point where they understand how we operate and we understand how they operate.*

Interestingly, housing associations by being neither public sector nor private sector, appear to have managed to position themselves neatly between the two. They seem not to be perceived by either local authorities or developers as having an alien set of values or opposing priorities.

## Preferred Option for Compliance with Part V

### Local authorities

The preferred option for all local authorities was the transfer of social and affordable housing built by the developer. Similarly all local authorities' least favoured option was a financial contribution from the developer.

The interviews found that this preference is not shared equally by all local authorities. A number of local authorities are known to be keen on the financial option, which means that the Part V

agreement consists of a sum of money paid over to the local authority that represents the value of the transfer of 20 per cent of the land. This has the advantage of simplicity but results in less overall provision of social housing, with perhaps too much dependency on dwindling land banks and less social housing being provided in mixed tenure developments, thereby potentially reinforcing residential social segregation.

There were three circumstances where local authorities would consider another option, preferably the provision of social and affordable housing on an alternative site. These were:

- a) Where the development was small (one local authority suggested less than 20 units in total), and it was considered not worth the staff time involved to negotiate an agreement that might only result in a small number of social and affordable units.
- b) Where the proposed development comprised very high specification large houses, or apartments with high specifications such as underground parking. In these circumstances the cost of a unit would be far too high for social and affordable housing, and it may not be practicable to incorporate smaller or lower specification units in the development. Two local authorities also suggested that many social rented tenants might not feel comfortable living in these type of developments. All these problems are compounded when these developments are relatively small as they often are.

*It's very hard to insist [on] a smaller standard specification social unit in a corner of a luxury apartment block. So you have to strike a balance between what you're looking for when you're thinking about integration. Do you force people to live in a situation where they might be uncomfortable?*

- c) Where the existing use value was very high, for example land with a hotel standing on it. The effect of this would be to increase greatly the cost of social and affordable housing on the site.

### Developers

Developers did not express an unambiguous preference for making a financial payment rather than other options set out in the legislation, as might have



been expected. This may have been due to a pragmatic acknowledgement that local authorities were in the main looking for completed units.

There was general agreement amongst developers that building social and affordable housing was not appropriate for developments of expensive houses or apartments. The main reason that was given was that it would not be fair on tenants in social rented housing in such developments because they would be unlikely to integrate with their wealthy neighbours and would therefore be isolated. In these circumstances developers were willing to consider providing social and affordable housing on an alternative site.

A number of developers complained that local authorities were too inflexible and would not consider alternatives to building social and affordable units on site.

### Housing associations

Housing associations' preferred option was, not surprisingly, the transfer of social housing built by the developer.

Housing associations with experience of working with many developers (not limited to working on Part V housing schemes) offered the following assessment of

developers' priorities for complying with Part V:

1. A financial contribution
2. Off-site provision of affordable housing and social housing
3. Affordable housing only
4. Affordable housing and social housing in the form of housing for the elderly
5. Affordable housing and general needs social housing managed by a housing association
6. Affordable housing and general needs social housing managed by a local authority

## Negotiating a Part V Agreement

### Local authorities

Most local authorities stated that a Part V agreement was rarely if ever completed within eight weeks of planning permission being granted. However, whilst local authorities acknowledged that they were responsible for some delays, due in the main to inadequate resources, three also advocated a statutory duty to complete an agreement within a time frame.

*We would prefer it if a Part V agreement had to be reached within four months.*



*A statutory obligation to have a deal done within a certain period might help. Say within two months of starting on site they must have an agreement, otherwise their whole development is illegal.*

*We would like to see Part V agreements in place before planning permission is applied for.*

Some local authorities reported that on occasions a development would be on site before a Part V agreement would be reached.

*We're now chasing a lot of developers who are on site without Part V agreements in place; but that might be our fault as much as theirs.*

A factor that has the capacity to delay negotiations significantly is the requirement for local authorities to get approval from the DoEHLG for all social rented schemes larger than five units and or above cost limits. A number of local authorities reported that if they waited for approval from the DoEHLG before reaching a Part V agreement, it would be impossible to negotiate an agreement.

*If I had to contact the department [DoEHLG] at a particular stage in the negotiation and wait three weeks for a response I wouldn't be able to do a deal.*

## Developers

All developers complained about the time taken to reach a Part V agreement and laid the blame for this squarely at the door of local authorities. Instances were quoted of many months taken to arrive at an agreement.

The legislation states that if an agreement is not reached within eight weeks of planning permission being granted, the applicant can refer a dispute to An Bord Pleanála or to the property arbitrator, depending on the nature of the dispute. No developer could recall an instance when an agreement was made within eight weeks of planning permission being granted.

*You can't even get a meeting within eight weeks!*

A number of factors were highlighted that contributed to these delays:

- Local authorities were considered to be under-resourced.

*The local authorities last year didn't spend [all] the money the DoE sanctioned them for social and affordable housing... If local authorities can't build the houses they're sanctioned to build, how can they be expected to deal with the intricacies of Part V?*

- As public sector organisations, local authorities were perceived to work to a different ethos from the private sector.
- Local authorities changed their minds during the process.

*We have what we think is an agreement in principle with social and affordable units all marked out on the drawing. We're building them now – which means for example that we're leaving out the en suites in the social housing. Then the local authority comes back and says 'we don't like those units'.*

- Local authorities were subject to political interference.

*The local authority is an extension of the political system so indecision, [or] making no decision is the best way of keeping your nose clean, and if I worked there I would do the same, because politicians interfere and say one thing today and another tomorrow.*

- Local authority decision-making structures militated against making decisions quickly.

*[The problem is] delays and getting to the people who can make the decisions. You might think you're going in to do a deal and you find that the person you're sitting down with doesn't have the power and maybe doesn't know what they're meeting you about.*

One of the consequences of taking a long time to reach a Part V agreement is that in a number of instances work had started on-site without an agreement being in place; in some cases without even agreement on the location of social and affordable units.



## Affordable units lying empty

Some developers complained that in a number of instances completed affordable housing units lay empty for a considerable period of time, either whilst a Part V agreement was being negotiated, or whilst the local authority went through the process of selling the houses to qualifying purchasers. Periods of between nine months and 18 months were referred to. A consequence of this is that because the units had not been sold, security costs fell to the developer.

## Standard Construction Costs

One way of simplifying the assessment of building and development costs would be to use standard construction costs that would be agreed in advance between developers and local authorities. These would apply to specified house types, sizes and construction methods.

### Local authorities

All local authorities interviewed said they would welcome standard construction costs.

One authority has developed a template which breaks down the building of a house into discrete elements and has developed benchmarks for each of these. Developers are asked to submit costs according to the framework set out in the template which makes it very easy for the local authority to ensure that costs are realistic, without the need to involve outside expertise in many instances.

### Developers

One developer did not express a view on the use of standard construction costs; three were in favour, with varying degrees of enthusiasm; and two were opposed. Positive views included:

*I'd welcome it. It would streamline, and anything that streamlines any business makes it more efficient. I'd have thought they (local authorities) would get better value for money at the end of the day. Sitting on a scheme which has planning permission doesn't suit anyone.*

*At this point in time a reasonable standard cost wouldn't be a perfect solution but would be better than where we are now.*

Those who did not think that using standard construction costs would facilitate making an agreement outlined the following problems:

- ❑ Costs are very site-specific, and may depend on site conditions as well as the building type.
- ❑ Different construction methods have different costs. For example, a precast concrete structure will be more expensive than a traditional form but may be the most appropriate for the particular development.
- ❑ Where developments include basements, commercial units or similar, it would be impossible to use standard construction costs.
- ❑ The specification of a house may depend on its location, so that a three bedroomed semi-detached house in west Dublin may have a lower specification than a similar sized house in south Dublin.
- ❑ If social and affordable housing is to have the same external appearance as private housing, then in a high specification scheme the cost of social and affordable housing will be greater.

## Affordable Housing Demand and Public Perception

### Local authorities

A number of local authorities expressed concern about the likely demand for affordable housing. Two authorities said they had experienced serious difficulties in selling some affordable housing.

*I'm not convinced the demand is there. We'll be doing more marketing. Education is needed on what affordable housing is. People confuse it with social and voluntary.*

Three local authorities reported a low level of awareness among the public about affordable housing. In addition local authorities reported a perception among some people that 'affordable' meant a price of €50,000; people being very choosy about location; people associating affordable housing with local authority housing and the associated stigma.

*Affordable housing is seen by some as a council house.*

## Housing associations

One housing association expressed the view that in a number of areas, especially rural areas, demand for affordable housing was low or non-existent. This was thought to be due in part to a sometimes very low differential between equivalent affordable and market housing, which when the claw back was taken into consideration made the affordable housing particularly unattractive.

## Developers

Whilst developers did not express a view on the overall demand for affordable housing, one developer made the observation that as with private housing, location was important. This meant that potential purchasers might favour a more popular location over a less popular location leading to a lack of demand in the less popular location.

Developers believed that there was a considerable lack of understanding about the nature of affordable

housing amongst potential applicants.

*People don't understand, they think it's part of the social housing system.*

One developer felt that affordable housing was marketed in a way that reinforced this perception.

## Apartments

### Local authorities

Local authorities in larger urban areas said that almost all social and affordable housing built under Part V would comprise apartments. This raises a number of housing management issues, but one in particular was emphasised – the issue of management fees. The management and maintenance of the exterior and common areas of apartment blocks is usually the responsibility of a managing agent whose work is funded by management fees payable by the owners of the apartments. In the case of social rented housing this means that the responsibility for payment lies with the local authority or housing association. Local authorities reported that they were quoted annual management fees per unit ranging



from €500 to €1400, and said they were extremely concerned about the impact of management fees on their finances.

*You have to make sure the affordable household can afford to pay it on top of the mortgage. As far as social rented is concerned, in some cases the differential rent won't even cover the management charge.*

## Housing associations

The increase in apartment building for social housing raises a number of crucial issues of concern to housing associations. These include design issues (in particular ensuring that the scheme is appropriate for families with children), and management issues.

In common with local authorities, housing associations were particularly concerned about the issue of management fees. Housing associations' only revenue income from rented housing is the differential rent plus the management and maintenance allowance. Housing associations said that they simply could not afford to pay the management charge out of this income.

## Local Authority Issues

### Organisational arrangements

Obviously staff resources devoted to Part V depend to a degree on the level of Part V activity. Nearly all local authorities interviewed said that they expected Part V activity to increase significantly in years to come.

Arrangements included one person dealing with Part V in addition to other duties; one person working full time on Part V; a dedicated Part V team of between two and four people, which may have additional responsibilities.

Input from professional disciplines such as legal, architectural and surveying is essential for the effective operation of Part V. Local authorities varied in their arrangements for getting specialist advice and assistance. Some would seek it in-house; others would out-source it. This decision seems to depend on the capacity of other relevant departments within the local authority to provide a service to the Part V team, and assessments by the team of the quality of in-house services compared with out-sourced services.

Local authorities were asked about their preferred structure for optimum delivery of Part V. Responses

varied, and were dependent on local factors.

*Part V team would include a quantity surveyor and two solicitors to deal with agreements and conveyancing. We also need easy access to an architect.*

*We would like to see team of four: two negotiators with appropriate skills and two administration staff.*

### Staff resources available for delivery of Part V and ensuing work

Only one local authority was satisfied with the level of resources available to ensure delivery of Part V.

All but two local authorities agreed that they were sometimes responsible for delays in reaching Part V agreements. In each case they blamed inadequate resources. They pointed out that the current embargo on staff recruitment prohibits them from recruiting additional staff, but that the direct and indirect workload arising from Part V was very substantial and will grow in the immediate future.

*Delays do happen, and because of inadequate resources. You do a lot of fire fighting and crisis management. It's difficult to give the time to plan.*

The direct additional workload arises from the staff time devoted to reaching a Part V agreement. The indirect workload arises from consequential work such as processing applicants for affordable housing, allocating social housing, and last but not least managing the additional social housing. All this, local authorities say, has to be done with no additional staff resources, since the embargo on recruitment of new staff (in place since December 2002) means that a growing stock of social rented housing units has to be managed by the same number of staff.

*The success of housing – all kinds – is in the management. It doesn't manage itself.*

### Pre-planning discussions

All local authorities stressed the importance of pre-planning meetings, although with somewhat variable degrees of emphasis. Whether or not these meetings actually happened varied too. One local authority said they 'occasionally' had pre-planning meetings, whilst another said that they insisted on them. Where they didn't happen local authorities blamed lack of resources.

*Lack of pre-planning permission discussion is as much our fault as it is the developer's fault.*

Where pre-planning meetings took place, they generally involved the following:

- ❑ Discussion and agreement on the option for compliance with Part V.
- ❑ Where the building and transfer of units is the option agreed, discussion and agreement on the number, size, type and location of social and affordable units.
- ❑ Some discussion of compensation, and where appropriate, building costs.

The extent to which these negotiations on Part V agreements were concluded varied considerably. Obviously where pre-planning meetings did not take place, nothing could be agreed prior to planning permission being granted. At the other end of the scale one local authority said:

*Everything is sorted before planning and pro rata adjustments made afterwards. We agree an inflation allowance based on the DoE building inflation index.*

Others put limits on the extent to which they could conclude a Part V agreement before planning permission had been granted.

*It is difficult to make agreements pre-planning permission because what they might end up with post-planning permission might be very different from what they started out with. It's a convoluted process, so to make an agreement pre-planning, and then have to do it all over again if planning permission turns out to be different, for example a different number of units or with special conditions attached, is a waste of time.*

In addition, if the transfer of housing built by the developer is included, it will be necessary to establish the building and attributable development costs and a reasonable commercial profit (DoEHLG, 2000b).

Two local authorities did not make reference to Existing Use Value at all, nor did they engage in detailed assessment of building and development costs. Instead they decided what they considered was an appropriate cost for affordable housing, and negotiated using that figure.

One local authority said that it negotiated different prices for social and affordable housing, which would appear to be in direct conflict with the legislation's guidelines. The issue of standard construction costs also impacts on the process of negotiation.

## Negotiating strategies

Most local authorities preferred to consult with technical specialists as required (these may include architects, planners, quantity surveyors, valuers, the housing department), and then negotiate with as few people as possible around the table. An exception to this might be in the case of a large development, where specialists might be included in the negotiations.

There was a strongly held view by most local authorities that at the end of the day the negotiations were about doing a deal. There was an awareness that despite the importance of aggregate monetary value and technical input, successful outcomes required compromises and flexibility from both sides.

*You're negotiating, trying to get the best deal you can ... but at the end of the day everything has to be by agreement.*

*You can't be too bureaucratic about it, or you'd never do a deal.*

## Financial aspects of Part V agreements

In this crucial aspect of negotiation, very different local authority practices emerged. The legislation is unambiguous. In most cases the net value of the transfer to the local authority will be the difference between the Development Value of 20 per cent of the land and the Existing Use Value of that 20 per cent. This aggregate monetary value will apply whatever option or combination of option is agreed.

## Developer Issues

### Selling affordable housing

Developers were sceptical of local authorities' ability to sell affordable houses.

*Local authority staff are not in the private sector, they're not incentive driven in the same*





way as the private sector. Estate agents work on commission, so they're hungry, they're keen. Whether the local authority can get that enthusiasm, I don't know.

### Public perception of social housing

Developers all agreed that there was stigma attached to social housing, to the extent that where private housing was located near social housing, there would be an impact on price.

*It does affect pricing, yes. Units that are immediately adjacent to or backing on to social housing will be of a lesser value than other units and we have to take that into consideration.*

*You don't put your four bedroom prime product next to social housing. It could have a serious knock-on effect on its value.*

One developer emphasised the importance of providing information to potential purchasers right at the beginning of the process.

*We would turn round and say to the private buyers up front where the social and affordable housing is going to be so there's no issue down the road, no misrepresentation in terms of selling.*

## Housing Association Issues

### Part V negotiations

Housing associations believe strongly that where they are to be taking social housing under Part V, it is essential they are involved in discussions over design issues at a very early stage in the negotiations.

*If we are involved at the beginning, we can influence critical design issues, such as play space and location of social units; but if we miss this, it can lead to serious design mistakes.*

### Getting approval for funding

Social housing provided under Part V by housing associations is funded either by the Capital Assistance Scheme or the Capital Loan and Subsidy Scheme. Housing associations reported very substantial delays in getting approval from the DoEHLG for applications for funding under these schemes. In the case of Part V activity, this delay meant that work had to begin on site without funding approval, since no developer would be prepared to wait for several months before starting work. Housing associations said that in a number of cases schemes have been completed without funding approval.

A further issue raised by housing associations – also raised on other occasions – is the fact that applications for funding are scrutinised by both the local authority concerned and the DoEHLG, which contributes further to the delay.

# 6. Part V and Housing Output: Social and Affordable Housing Action Plans

In early 2004, local authorities were asked to prepare five year social and affordable housing action plans (SAHAPs). These plans built on the housing strategies developed under the Planning and Development Act 2000.

The SAHAPs were established to ‘provide a framework for the integrated and cohesive planning and delivery over the coming years of specific social and affordable housing measures in each local authority area, based on the relevant housing strategy’ (DoEHLG, 2004). In essence SAHAPs provide a detailed five year plan for output of social and affordable housing in the local authority’s area.

As with housing strategies, the concept of planning housing provision at this level of detail is to be welcomed. Most importantly SAHAPs provide targets against which progress can be measured and allow appropriate remedial action to be taken if the targets are not being met.

SAHAPs require local authorities to estimate two streams of social and affordable housing output:

- Social and affordable housing provided by local authorities and housing associations through direct provision, that is through funding provided directly by the DoEHLG

- Social and affordable housing output under Part V.

There are two elements of the second stream that are important to emphasise.

First, it does not represent total activity under Part V. Part V output may include a financial contribution instead of the provision of land or housing which would of course not appear in SAHAPs. And to make the picture even more complicated, where a local authority takes up to 20 per cent of the land of a new development and builds social and affordable housing itself on that land, the output counts as housing provided by direct provision rather than under Part V. In other words, the Part V output in the SAHAPs refers to housing units that are built by the developer and then transferred to the local authority or housing association.

Second, it is extremely difficult for local authorities to predict or determine future social and affordable housing output under Part V, since this is dependent on future applications for planning permission by private individuals or organisations that are in turn dependent on a wide range of factors outside the control of local authorities. These may include: national demand for new houses; current new house prices and land owners’ expectation of future trends; interest rates; wider economic performance; and local factors such as employment opportunities and infrastructural issues. The best a local authority can do is to estimate Part V output on the basis that the local authority is able to get its preferred option, using percentages of social and affordable housing set out in its housing strategy.

Aggregate figures for planned social and affordable housing output, derived from the SAHAPs from all local authorities are presented in the following tables.

Table 1 shows that Part V output, as would be expected, grows rapidly for the first couple of years, and then levels off in 2007; whereas direct provision peaks in 2006, dropping by about 12 per cent over the next two years. It is not clear why this should be, and this would benefit from further investigation.

**Table 1: Planned social housing output 2004 – 2008**

	Social housing	2004	2005	2006	2007	2008	TOTAL
Part V	Local authority Part V social housing	519	1089	1422	1481	1569	
	Housing association Part V social housing	348	575	767	780	730	
	Total Part V social housing output	<b>867</b>	<b>1664</b>	<b>2189</b>	<b>2261</b>	<b>2299</b>	<b>9280</b>
Direct provision	Local authority direct provision	5365	6118	6442	6284	6185	30394
	Housing association direct provision	2314	3181	3603	2752	2704	14554
	Total direct provision social housing output	<b>7679</b>	<b>9299</b>	<b>10045</b>	<b>9036</b>	<b>8889</b>	<b>44948</b>
	Grand total: all social housing	<b>8546</b>	<b>10963</b>	<b>12234</b>	<b>11297</b>	<b>11188</b>	<b>54228</b>

*Note: Total Part V social housing output does not include financial contributions or the default option of transfer of 20 per cent of land (see Table 3)*

In 2004, 10 per cent of social housing output was planned to be provided under Part V. This percentage is planned to rise steadily to 20 per cent by 2008. Housing association output is planned to run at about one third of total social housing output during the period of the plan.

The Annual Housing Statistics Bulletin for 2004 allows us to compare the projections in the social and affordable housing action plans with actual output. This is illustrated in Table 2.

Overall, social housing output under Part V is expected to add an extra 20 per cent to the social housing provided directly during the period of the SAHAPs, assuming that is, that all Part V output is additional to that which would be built if Part V did not exist.

Table 2: Planned social and affordable housing output under Part V compared with actual output

	Social housing	2004 planned	2004 actual	2005 planned	2005 actual
Local authority social housing	Part V social housing	519	135	1089	203
	Direct provision	5365	4375	6118	4924
	<b>Total local authority social housing output</b>	<b>5884</b>	<b>4510</b>	<b>7207</b>	<b>5127</b>
Housing association social housing	Part V social housing	348	82	575	206
	Direct provision	2314	1607	3181	1144
	<b>Total housing association social housing output</b>	<b>2662</b>	<b>1689</b>	<b>3756</b>	<b>1350</b>
	<b>Grand total: all social housing</b>	<b>8546</b>	<b>6199</b>	<b>10963</b>	<b>6477</b>
	Affordable housing	2004 planned	2004 actual	2005 planned	2005 actual
Local authority and housing association	<b>Total 1999 scheme affordable housing</b>	<b>1226</b>	<b>860</b>	<b>1113</b>	<b>857</b>
	<b>Total Part V affordable housing</b>	<b>1078</b>	<b>374</b>	<b>2201</b>	<b>962</b>

Table 2 shows that in all areas of social and affordable housing, actual output was significantly less than planned in both 2004 and 2005. In particular, actual social and affordable housing output under Part V in 2004 was only 30 per cent of the planned output, and was only 35 per cent of planned output in 2005. Local authorities performed particularly badly, producing only 19 per cent of planned Part V social housing in 2005.

Furthermore, in 2005 social housing provided under Part V was planned to represent 15 per cent of all social housing (Part V and direct provision) yet the actual figure was only six per cent. However, overall output of social and affordable housing under Part V grew by 230 per cent between 2004 and 2005 which suggests that the growth may simply be lagging behind the planned increase and will catch up in time.

All of this serves to further underline the current difficulties inherent in attempting to predict output under Part V.



Table 3: Planned social and affordable housing output under Part V

	Part V Output	2004	2005	2006	2007	2008	TOTAL
	Local authority social	519	1089	1422	1481	1569	
	Housing association social	348	575	767	780	730	
	<b>Total Part V social</b>	<b>867</b>	<b>1664</b>	<b>2189</b>	<b>2261</b>	<b>2299</b>	<b>9280</b>
<b>A</b>	Local authority affordable	547	1388	1962	1957	1996	
<b>B</b>	Housing association affordable	65	122	186	192	192	
<b>C</b>	Local authority or housing association affordable	466	691	980	1021	1042	
	<b>Total Part V affordable</b>	<b>1078</b>	<b>2201</b>	<b>3128</b>	<b>3170</b>	<b>3230</b>	<b>12807</b>
	<b>TOTAL</b>						<b>22087</b>

Note: Not all SAHAPs distinguished between local authority affordable and housing association affordable. Where the SAHAPs did, this is recorded as in rows A and B of the table; where they did not, the aggregate affordable housing figure was used, as in row C. Total Part V output does not include financial contributions or the default option of transfer of 20 per cent of land.

Table 3 shows that total Part V social housing output is planned to increase by 265 per cent during the period of the plan, and Part V affordable is planned to increase by 300 per cent.

In general, housing associations will be making a substantial contribution to Part V social housing output (although 14 local authorities plan 20 or less housing association units under Part V during the period of the plans). However, local authorities do not envisage housing associations making a

significant contribution to affordable housing output under Part V despite provisions in the 2002 Act, which specifically empowers them to do so. This may be for a number of reasons, including the fact that arrangements with the Housing Finance Agency for providing loans directly to housing associations have yet to be finalised.









## 7. Discussion and Recommendations

One of the striking findings of this research is that all interviewees, whatever their views of the planning and development legislation and Part V, stated that it was in everyone's interest for it to be implemented effectively. This is an encouraging finding, particularly if it is accompanied by a willingness to find the middle ground on some issues. This in turn will require a greater understanding of the key areas of concern of each of the three principal players: local authorities, developers, and housing associations.

### Two cultures

The operation of Part V may be described as a limited form of partnership between the public sector and the private sector. It is not however, a partnership of equals, since local authorities have planning functions and have the responsibility for determining whether or not planning permission should be granted. In some cases housing associations, which as independent non-profit making organisations are neither public nor private sector organisations, also play a crucial role; however the main players are local authorities and developers.

Each of the two has different and sometimes conflicting priorities and constraints. Those directly relevant to this discussion may be characterised as follows.

#### Local authorities:

- ❑ have both a representational role and an operational role.
- ❑ have structures, operations and functions that are governed by legislation.
- ❑ have a wide range of functions.
- ❑ have to account to central government and the local electorate for their actions and tend to have decision making structures which reflect this (rather than a need to make decisions quickly).
- ❑ tend not to engage in risk taking activity.
- ❑ have not been allowed to recruit additional staff since December 2002.
- ❑ do not encourage the development of specialist skills in all disciplines.

#### Developers:

- ❑ are focussed on profit making.
- ❑ engage in risk taking activity.
- ❑ expect to make decisions quickly and may incur significant financial penalties if decisions are delayed. This is because much of the expenditure on a housing development occurs early in the project, and it is only recouped when the houses are sold.

There is not always an equal and complete awareness by local authorities and developers of the extent of each others' autonomy and limitations on activity.

This lack of mutual understanding is exacerbated by a number of factors:

- Many local authority housing departments have had relatively little experience of working closely with developers. Before Part V was introduced, most developers' experience of local authorities was limited to communication with planning departments. Many developers have had little experience of working with local authority housing departments.
- The legislation is complex. Interpretation of the legislation and implementation has posed difficulties for both local authorities and developers.
- Part V agreements involve complex negotiations, which some local authorities and some developers may not be experienced in.

Despite this deficit, there is evidence from local authorities, developers and housing associations, that at least in some cases, the major players are beginning to have a better understanding of each others' position.

## Local Authority Staff Resources

All but one of the local authorities complained of inadequate resources, particularly in the context of an expected significant growth in Part V activity in the near future. This has been exacerbated by the embargo on recruitment of new staff in place since December 2002, and the fact that Government aimed to reduce total staff numbers in local authorities by 1000 by the end of 2005.

There are two related aspects of the staff resource issue: first the staffing required to ensure that appropriate Part V agreements are achieved within a short time scale; and secondly the staffing required to deal with the subsequent growth in the provision of social and affordable housing.

As far as the first is concerned, all local authorities are allowed a 1 per cent management allowance on top

of the amount payable for social units to a developer under Part V in recognition of the resource implications involved in assessing and finalising Part V agreements for social units. This allowance would be of assistance in establishing Part V teams where there is or will be significant activity under Part V. However the fee will not apply where a housing association is the social housing provider, even though the local authority will have had to take responsibility for negotiating the Part V agreement.

It is beyond the scope of this study to assess in detail the extent to which local authority concerns about inadequate staff resources are justified. However, the most recent review of local government funding recommends a significant increase in the level of resources available to local authorities over the period to 2010 (Indecon, 2005). The current approach to local government financing remains based firmly on central government grant making, limited local discretion and a developing equalisation system (Dollard, 2003).

What is beyond doubt is that a number of housing policy initiatives that have been implemented since 2002 have resource implications including: Part V (which of course includes the development of housing strategies as well as the provision of social and affordable housing); the Affordable Homes Initiative established under Sustaining Progress the partnership agreement for 2003 – 2005; and the Rental Accommodation Scheme. These increased demands have to be responded to with the same level of resources.

This is evidently an issue that needs further examination, but these details strongly suggest that local authority housing departments are under-staffed and likely to become more so in the future. Inevitably, the impact on the implementation of Part V may be negative.

On the positive side, interviews with local authorities suggested that they are using their resources more effectively now than when Part V began to feature on planning applications, primarily because senior staff have become more familiar with its operation.

Yet the lack of staff resources is a key issue, since it is one of the factors that contribute to delays in the process of arriving at a Part V agreement.

## Local authority organisational structures

Existing local authority structures for delivery of Part V vary greatly, however all local authorities with significant existing or planned Part V activity agreed that a dedicated Part V team was the most appropriate structure for ensuring effective delivery of social and affordable housing under Part V.

A dedicated Part V team's primary aim is to achieve the successful conclusion of appropriate Part V agreements. In most cases the actual negotiation should be carried out by the team leader, who should have delegated authority to make a decision in the majority of instances. The team leader will need to consult with local authority departments such as planning and housing, as well as seeking advice from architects, surveyors and solicitors as appropriate.

The role of the planning departments and the relationship between planning and housing departments was not examined, but it is perhaps worth noting that in many local authorities planning departments are already under considerable strain due to the volume of house building and development.

The extent to which the team should also comprise people with specific skills, such as a quantity surveyor or solicitor, will depend on local circumstances and in particular the extent to which those disciplines are easily accessible.

## Local Authorities' Interpretation of Legislation

Local authorities vary in their approach to negotiating the payments to developers for social and affordable housing where the option being pursued is the building of units by the developer and their subsequent transfer to the local authority.

The legislation states that the payments comprise the existing use value of the land in question plus the building and attributable development costs as agreed between the authority and the developer, including reasonable profit on the costs.

However, two of the local authorities interviewed did not follow this but instead adopted a more simplified approach. They decided what the selling cost of an affordable home in their local authority area should be, based on data from affordable waiting lists, or by applying a rough percentage of market cost, and used that figure as a basis for their negotiations.

This approach may appear to have the virtue of simplicity since it does not require complex negotiations on land values or construction costs, and it appears to be operating successfully in some instances. However it suffers from a number of significant problems, the first being that it is contrary to the legislation and advice from the DoEHLG.

Furthermore, eligibility for affordable housing is based on a household having an income above a level that qualifies it for social rented housing and below a level that enables it to purchase appropriate housing without mortgage payments exceeding 35 per cent of its net income. In other words households with a wide range of incomes may be eligible for affordable housing and the price that they will be able to afford will similarly vary, since this price will be determined by the household's income.

It therefore follows that housing that is 'affordable' may cover a wide price range, and different local authorities may have very different concepts of what constitutes an affordable price. It is important to note that to date most people purchase affordable housing with a local authority loan, and the maximum loan under this scheme is currently €185,000. This has therefore in effect been the maximum price of an affordable house.

Currently there is no national record of regional price variations for affordable housing, but the arrival of both Bank of Ireland and the EBS Building Society as mortgage finance providers will *de facto* increase this maximum price. This is because these loans will not be subject to a maximum amount or upper loan limit. Both lenders will allow borrowing up to 97 per cent of the purchase price and expect a three per cent deposit to be paid by the purchaser.

The borrower has the same product choice between tracker, variable or fixed rate mortgage options as a standard mortgage. New income multiples will also apply (between four and five times income for single borrower and 4.5 and 4.75 for joint borrowers).

Mortgage loans of 35 years length are available from both lenders. Up to mid-December 2005, approximately 200 applications had been received by the Bank of Ireland.

So, as well as being contrary to the legislation, the 'simpler path' method described above is in its nature problematic, since the outcome is to an extent determined by the negotiating skills of the participants, and perhaps the degree to which different players are able to exert pressure. A consequence may be significant inconsistencies in price setting, both within and between local authorities.



Overall, it is worth observing that developers, whilst they may not like this approach, are in some instances currently prepared to make deals rather than refer the matter to An Bord Pleanála or the property arbitrator, since any such referrals will lead to further delays which may have a far greater negative financial impact than any increase resulting in the involvement of An Bord Pleanála or the property arbitrator.

Both local authorities and developers noted that for Part V to operate successfully, negotiations need to take place in an atmosphere of mutual trust and respect. If negotiations are approached in this way and in a joint spirit of willingness to be realistic then it is highly probable that negotiations will be quicker and easier.

However, in addition to the problems noted above, it may well be the case that adopting the simplified approach has the potential to threaten such relationships.

## Guidance for Developers

A number of local authorities (for example Offaly County Council, Dublin City Council, Cork County Council) have produced guidance to developers on the implementation of Part V. The Offaly guidance includes *inter alia*, the following:

- ❑ A concise summary of the relevant sections of the Planning and Development Act.
- ❑ A summary of the relevant parts of its housing strategy.
- ❑ Information to be supplied by the developer for the pre-planning discussions.
- ❑ Information to be supplied by the local authority during the pre-planning process.
- ❑ Details required for completion of a Part V agreement.
- ❑ The content of a Part V agreement.
- ❑ General guidance on preparation of a Part V proposal.
- ❑ DoEHLG requirements.
- ❑ Assessment of compensation payable for different options under Part V.

This document would appear to provide an excellent template that could be usefully developed by other local authorities. It is also a model of brevity, covering all the above in 20 pages.

## Pre-planning Discussions

The DoEHLG guidelines emphasise the importance of pre-planning meetings, and indeed it is difficult to see how a local authority can ensure a Part V agreement that is consistent with its housing strategy can be achieved in the absence of pre-planning discussions. A further benefit of engaging in pre-planning discussions is that the subsequent negotiations leading to a Part V agreement are likely to be quicker. It is important to emphasise at this point that there is no legal compulsion to engage in pre-planning discussions, nor can they constitute a Part V agreement; which can only be arrived at after planning permission has been granted.

There are differing views about how much can and should be discussed before planning permission is granted. Some local authorities and developers take the view that the whole deal, including the financial aspects, can be agreed pre-planning (although of course subject to planning permission). Adjustments to costs can be made in line with the house building cost index produced by the DoEHLG, and if planning permission is granted for a different number of units, then adjustments can be made *pro rata*.

Others take the view that such detail is not possible or desirable in pre-planning discussions because the planning permission finally granted might be materially different from the permission applied for, which would mean that all the preparatory work would have to be done again. This might be the case particularly where the development is unusual or innovative in some respects, requiring input from technical experts.

However, it is assumed that part of the pre-planning discussion process will involve informal discussions with the planning department and housing department, and this should indicate whether or not the proposed scheme is likely to be granted planning permission without major changes. One interviewee with wide experience of planning matters suggested that the most common change required is a reduction in the total number of units. Again, this can be easily accommodated through a *pro-rata* reduction in the provision of social and affordable housing.

It is suggested that at a minimum the following issues should be addressed in pre-planning discussions:

- ❑ Discussion on the option for compliance with Part V. This is clearly an essential prerequisite, without which there is no point in applying for planning permission.

- Confirmation, if relevant, of the involvement and role of a housing association.
- Where the building and transfer of units, or where the 'alternative site' option is agreed, discussion on the number, size, type and location of social and affordable units.
- Discussion of financial arrangements. These should progress as far as possible, depending on the nature of the development. Indicative costings will be essential in order that the local authority can satisfy itself that the social units are likely to be below DoEHLG cost limits, and in the case of affordable housing that the final costs are likely to be within parameters set out in the local authority's housing strategy, (Payments to the developer for social units must of course be the same as for affordable units).

In order to minimise the possibility of misunderstandings further down the line it would be important for there to be written records of such meetings. It may be the case that some of the alleged changes of mind by local authorities have been based on different understandings of previous discussions.

## Standard House Construction Costs

One aspect of the negotiations between local authorities and developers that contributes to their length is achieving agreement on the costs of constructing dwellings. This may involve input from

a number of expert disciplines and considerable staff resources.

One way of simplifying the assessment of building and development costs would be to use standard construction costs that would be agreed in advance between developers and each local authority. These would apply to specified house types, sizes and construction methods. As some developers pointed out, delays themselves cost money, and it is in no-one's interest for negotiations to be unnecessarily prolonged.

It is clear that a 'one size fits all' model, such as a cost per m<sup>2</sup> would not work. There are simply too many variables, so that applying a cost per m<sup>2</sup> in all cases would generate a figure that would sometimes bear little relationship with the real cost. At the other end of the spectrum a model that attempted to take account of all the variables such as site conditions, method of construction, dwelling type, internal fittings etc, would be so complicated that it would be as simple to assess each scheme independently as is done at present.

However, there is a mid-way position that may be worth exploring. Much of the difference in costs between schemes is accounted for in the land value and the substructure costs (that is, all the building work up to ground level). Substructure costs will depend on the height of the building, and whether or not there is underground parking. They may also depend on site conditions; for example if the site is rocky, or the site slopes, or if the ground is contaminated.



The superstructure costs however, do not in general vary greatly, and it should be possible to benchmark these by agreeing one cost per m<sup>2</sup> for houses, and another for apartments.

One area where there may be variation is in the external elevations. It is widely agreed that social and affordable housing should have the same external appearance as the private housing, and this may of course vary considerably. In these circumstances it can be assessed as an 'abnormal' cost.

If these standard costs were to be agreed they would at the very least provide a starting point for negotiations, and they may well be applicable in their entirety.

A complementary system is operated by one of the local authorities included in this research. This local authority has developed a template which breaks down the development of a house into discrete elements and has developed benchmarks for each of these. Developers are asked to submit costs according to the framework set out in the template which makes it very easy for the local authority to ensure that the costs are realistic.

## Housing Strategies

The requirement on planning authorities to develop housing strategies that estimate the housing supply needed to meet the housing needs of all the population is a very welcome development. The supply of housing of all tenures and types is dependent upon a number of related actions within the responsibility of planning authorities (for example ensuring an adequate supply of zoned land, ensuring that the relevant infrastructure is in place).

Furthermore, provision of housing has a long lead-in time, so that actions by planning authorities need to be taken well in advance of the date when housing is required. Therefore housing strategies are essential tools for planning authorities in assisting them in their strategic function of ensuring that the housing needs of all the population will be met.

However, housing strategies are not without problems. A detailed critique of housing strategies is beyond the scope of this study; but there are a number of issues relevant to social and affordable housing under Part V that are important to highlight.

There are two main difficulties facing planning authorities in drawing up housing strategies:

- Whilst the future supply of housing is dependent on some related actions that are within the planning authorities' control, many other relevant factors are outside their control. These include private house prices, interest rates, the operation of the labour market etc.
- The development of housing strategies requires planning authorities to make predictions about future trends in demography, house prices, interest rates, in order to make an assessment of future affordability problems that may be experienced by some households. Many commentators, including those who would be perceived in some quarters as experts, have been wrong in their predictions of future house price trends and there is no reason to believe that planning authorities' crystal balls are better than anyone else's.

It is important to state that this should not be read as an argument against the principle of housing strategies, but instead these uncertainties suggest that housing strategies should be reviewed and revised regularly in the light of external developments, in particular the publication of Local Authority Assessments of Housing Need, and the actual demand for affordable housing.

## Demand for Affordable Housing

There is a view held by some commentators that in a number of local authorities, especially but not exclusively outside the greater Dublin area, the actual demand for affordable housing may not coincide with the estimates set out in the planning authority's housing strategy.

This can be because the estimate of demand for affordable housing is based on an area's demographic and income projections, and based on these the number of households who will be eligible for affordable housing once estimated. But eligibility and demand are two quite different things, and the fact that 'x' thousand households within a local authority area are eligible for affordable housing does not mean that there will be demand for 'x' thousand affordable houses in the locations that they will be built in. A number of interviewees referred to a lack

of awareness by the public of affordable housing, and the fact that some households appeared to associate it with social housing.

But there are other reasons which are not to do with perception and awareness. Housing demand does not necessarily follow local authority boundaries, so a household that might be eligible for affordable housing in the local authority area they currently live in, might find better value housing options in a neighbouring local authority area. Similarly, whilst the issue of location has become a development cliché, it remains important and affordable housing may not always be provided in locations that eligible households wish to live in.

Overall, it is extremely difficult to devise a methodology that will assess the future demand for affordable housing with any accuracy. In these circumstances it will be extremely important that planning authorities monitor closely the actual demand for affordable housing in their areas in order to make appropriate revisions to their housing strategies, and social and affordable housing action plans.

In this context it is important to note the work of the Affordable Homes Partnership (AHP), which was established in August 2005 to drive and co-ordinate the delivery of affordable housing in the Greater Dublin Area (GDA). Its role is also to interact closely with central government departments responsible for key infrastructure delivery, including transport, schools and water to ensure a rapid 'whole of government' approach to affordable housing developments.

Significantly, the AHP defines affordable homes as 'homes either for ownership or rental for which a household will pay no more than 35 per cent of its gross annual income'. One of its key functions is to report on demand for housing and the levels of supply and to promote a common approach to implementation of Part V in the GDA.

## Demand for Social Housing

Compared with assessments of the demand for affordable housing, the estimate of demand for social housing has a significantly higher confidence level. This is because local authorities are required under section 9 of the Housing Act 1988 to carry out triennial assessments of the need for social housing in their areas.

Preliminary results for the 2005 Local Authority Assessment of Housing Need (LAAHN) have recently been published (DoEHLG, 2005) and show an aggregate reduction in the number of households on waiting lists since the previous assessment in 2002 of 9.8 per cent. The variation between local authorities is very large: one local authority recorded a reduction in its housing waiting list of 56 per cent; another recorded an increase of 72 per cent. These changes may of course have a significant impact on housing strategies and social and affordable housing action plans, and underline the importance of regular revision.

However, one of the weaknesses of LAAHNs is that they do not measure severity of housing need and all households on housing waiting lists are treated as though they have an equal level of housing need. This means that there may be some people registered on housing waiting lists who have a very low housing need.

On the other hand LAAHNs may under-estimate other elements of housing need.

- ❑ There is evidence that some single people do not bother to register on local authority housing waiting lists because they know they have no chance of being made an offer of accommodation in the foreseeable future (Williams and O'Connor, 1999).
- ❑ Some households think they are registered but have in fact dropped off the list (Williams and O'Connor, 1999). This happens if a household changes address but doesn't notify the local authority.

Furthermore, local authorities are asked to exclude from the final figure certain households that are not assessed as suitable for local authority housing.

- ❑ Households whose need for assistance could, in the opinion of the authority, be more appropriately met by rent or mortgage supplementation under the supplementary welfare allowance scheme. Arguably, this highly unsatisfactory category was originally a euphemism for single people, who were not seen as appropriate for housing by local authorities.
- ❑ Households living in unfit local authority housing.
- ❑ Households living in overcrowded or materially unsuitable local authority housing.

- Households whose need could be more appropriately met by other social housing measures (This includes households with a particular need in addition to their housing need).

These households are excluded from LAAHNS but are clearly in housing need and their needs should be incorporated in housing strategies and SAHAPs.

### Local Authority Approval from the DoEHLG for Social Housing

Currently local authorities must have prior approval from the DoEHLG before signing a manager's order for all social housing schemes of more than five units, and for schemes of less than five units where the costs are greater than agreed cost limits. In other words, prior approval from a central governmental department must be gained for the vast majority of local authority and housing association social housing schemes.

As reported above, a number of local authorities were placed in a position where they felt they had to apply retrospectively for approval for social housing schemes from the DoEHLG, because if they used the normal procedure the delay would be such that a Part V agreement would not be possible to achieve.

This is clearly highly unsatisfactory. Applying for retrospective approval discredits the entire approval system. There are broadly two options for tackling this issue:

- Keep the existing requirement for approval as it is, and devise a mechanism that will guarantee a response in time to ensure that a Part V agreement can reasonably be made.
- Amend the approval system and reduce the requirement for approval from the DoEHLG for each and every scheme as outlined above. The evidence of local authorities that apply retrospectively for approval suggests that this level of scrutiny is not necessary in at least some cases. One way of doing this would be to allow local authorities to proceed on all housing schemes where costs are below cost limits without prior approval from the DoEHLG. In order to satisfy itself that this system was working, the DoEHLG could institute a system of spot checks. This new system could be established incrementally, applying first to housing schemes under Part V.

### Housing Association Approval from the DoEHLG for Social Housing

The situation for housing associations is significantly worse than that experienced by local authorities. Delays in processing applications for funding under the Capital Assistance Scheme and the Capital Loan and Subsidy Scheme are so great that some housing schemes have been completed before approval has been granted.

In the absence of funding approval the housing association is unable to enter into a formal building agreement, and consequently it cannot instruct the builder in such matters as alterations and defects. So if a significant defect were to occur the housing association would have no legal basis for insisting on remedial action. It also means that the housing association cannot instruct the builder to carry out significant alterations that might be required for potential tenants with special needs.

If housing associations have to wait for formal approval from the DoEHLG before starting on site, it is quite simply the case that not a single unit of housing under Part V could be produced by housing associations.

As with local authorities, this is highly unsatisfactory and discredits the current system. Some local authorities are depending on housing associations to provide the greater part of their social housing under Part V. Unless the present system is radically revised, it is difficult to see how this can happen.

Recommendations for a more effective system have been made elsewhere (Brooke, 2001). These propose that a small number of housing associations with significant development experience and that can demonstrate the capacity to carry out development work would be given 'authorised developer' status which would free them from the current extremely cumbersome process whilst at the same time ensuring accountability for the expenditure of public finances.



## Joint Approaches to Local Authorities by Housing Associations and Developers

There are significant benefits to both housing associations and developers when they establish an effective working relationship that is formed before the stage of making a planning application to a local authority. It means that collaboration at a very early stage in the design of a housing scheme becomes possible – the importance of this was emphasised by both housing associations and developers. Furthermore there are obvious synergies that emerge from a continuing relationship.

In order for this to work, it is necessary for local authorities to be prepared to consider a joint approach from a developer and a housing association. Clearly a local authority cannot be bound by such an approach, since the local authority retains the final say about which option of the Planning and Development Acts will be used, and whether the social housing will be provided by a housing association or the local authority itself.

It is worth noting that there are considerable benefits to local authorities if the social housing is provided by a housing association. It costs the local authority little, since the capital funding does not come out of the local authority allocation, and the consequence is an increase in social rented housing and a reduction in the number of households on the local authority housing waiting list.

Where such an approach is made and accepted by the local authority, it will be of considerable benefit if the housing association is involved in pre-planning discussions and in the formulation of the Part V agreement. Whilst the Part V agreement is between the local authority and the developer, and it is important that the local authority negotiates the financial aspect of the agreement, it would be most important for the housing association to participate in the discussion, and in particular to have an input into the design of the housing development since it will have ownership of the social housing element of the housing scheme.

## Apartments and Management Fees

As stated earlier, local authorities are extremely concerned about the impact of management fees on their finances. Housing associations are, if anything, even more anxious. It will be recalled that the management and maintenance of the exterior and

common areas of apartment blocks is usually the responsibility of a estate management company whose work is funded by management fees payable by the owners of the apartments, which in the case of social rented housing means the landlord – the local authority or housing association.

Housing associations said that they could not afford to pay the management fee out of the income they receive from renting housing, which is limited to the differential rent plus the management and maintenance allowance. If existing arrangements endure, housing associations will simply not be in a position to provide social rented housing in apartments. That will mean no Part V activity in areas where it is most needed.

This issue has been highlighted elsewhere (Norris, 2005) and it is in urgent need of attention. The fact that local authorities, and to an even greater extent housing associations, are not empowered to take the measures necessary to deal with this problem underlines the serious difficulties caused by the lack of a defined social housing revenue stream for local authorities and housing associations.

## Recommendations for Policy and Practice

### Policy

#### Building Sustainable Communities

*Building Sustainable Communities* is the title and stated aim of a new policy statement for housing issued by government in December 2005. At the time of writing more details are awaited, yet what is known is that the key objective of this policy 'is to promote the conditions whereby the maximum number of people can access affordable accommodation through private provision'. The policy does also recognise that a range of supports are required 'to assist those who cannot access such accommodation from their own resources'.

This and other recent research findings (Norris, 2005) support the argument that building for sustainable communities requires the integration of the principle of mixed-tenure development that can secure significant social, economic and community advantages over single-tenure social housing estates.

It is recommended therefore that Part V developments generate sustainable communities through the delivery of a diversity of housing types





and housing tenures that in effect reduces residential social segregation.

This means that Part V development ensures quality design and high building standards are achieved for a variety of dwelling types for single and family occupation including homes for sale, self-built homes, shared ownership, market rented and socially rented homes.

#### **Enabling Social and Affordable Housing Provision**

It is recommended the forthcoming details of *Building Sustainable Communities* set out a clear statement of what an enabling strategy is at local level and how Part V relates to it.

This means that among other things housing policy clearly articulates:

- ❑ What the strategic enabling functions of a local housing authority are, especially with relation to the provision of social rented and affordable housing;
- ❑ How house building and improvement are to be enabled and property management influenced to secure sustainable communities;
- ❑ How disadvantage and exclusion will be reduced through the adoption of enabling strategies;
- ❑ How the provision of housing information and advice on housing options is enabled, and;
- ❑ How the enabling role of local authorities is managed, and how performance is measured.

#### **Practice**

##### **Local authority organisational arrangements for Part V agreements**

It is recommended that local authority housing departments establish dedicated Part V teams to achieve the successful conclusion of Part V agreements. The actual negotiation should be conducted by the Part V team leader who will have delegated authority to sign off on the final Part V agreement.

##### **Local authority and housing association process for getting development approval from DoEHLG**

It is recommended that where a local authority social housing scheme is below cost limits, or where housing associations can demonstrate capacity to carry out a housing development programme professionally and within costs, that both agencies would not need prior approval from the DoEHLG before entering into a contract to build out a scheme. The DoEHLG should instead institute an appropriate regulatory system of spot checks on local authority social housing schemes to ensure performance is monitored and at the required standard.

##### **Standard construction costs**

It is recommended that a standard construction costs system is established and introduced to help streamline the negotiation of Part V agreements and improves their efficacy.



### **Guidance for developers**

It is recommended that all local authorities produce and disseminate written guidance for developers on policy for Part V output and pre-planning negotiation, as established by the housing strategy adopted under each local authority development plan.

### **Enabling joint approaches to local authorities by housing associations and developers**

It is recommended that local authorities include in their guidance to developers an explicit statement that as part of their enabling function they encourage joint approaches by developers and housing associations for the development, delivery and management of social and affordable housing.

### **Pre-planning discussions**

It is recommended that the DoEHLG provide further detailed guidance to local authorities on Part V pre-planning discussions with developers. Guidance should stress the importance of conducting discussions as an essential prerequisite to formal applications for residential development, and should include *pro forma* items to be covered at pre-planning discussions.



# Appendix 1:

## Organisations interviewed

### **Local authorities**

Cork County Council  
Dublin City Council  
Dun Laoghaire Rathdown County Council  
Fingal County Council  
Limerick City Council  
South Dublin County Council  
Waterford City Council

### **Developers**

Castlethorn Construction  
Durkan New Homes  
Gannon Homes  
Glenkerrin Homes  
McInerney Homes  
One developer preferred to remain anonymous

### **Housing associations**

Iveagh Trust  
BIH Ireland  
Clúid Housing Association



# References

- Bacon, P., F. McCabe and A. Murphy (1998) *An Economic Assessment of Recent House Price Developments: Report submitted to the Minister for Housing and Urban Renewal*, Dublin, Government Publications Office.
- Bacon, P., F. McCabe (1999) *The Housing Market: An Economic Review and Assessment: Report submitted to the Minister for Housing and Urban Renewal*, Dublin, Government Publications Office.
- Bannon, M.J. (2004) 'Forty Years of Irish planning – an overview' in *Journal of Irish Urban Studies*, Vol 3 (1), Dublin.
- Bannon, M.J (2005) 'Spatial Planning Frameworks and Housing' in Norris, M. and Redmond, D. (Eds) *Housing Contemporary Ireland: Policy, Society and Shelter*, Dublin, Institute of Public Administration.
- Brooke, S. (2001) *Social Housing for the Future: Can Housing Associations Meet the Challenge?*, The Policy Institute, Dublin.
- Department of the Environment, Heritage and Local Government (1995) *Social Housing – The Way Ahead*, Dublin, Government Publications Office.
- Department of the Environment and Local Government (2000a) *Circular HS/400 Guidelines for Planning Authorities Part V of the Planning and Development Act 2000 Housing Supply*, Dublin, Government Publications Office.
- Department of the Environment, Heritage and Local Government (2000b) *Part V of the Planning and Development Act 2000: Housing supply, Guidelines for Planning Authorities*, Dublin, Government Publications Office.
- Department of the Environment, Heritage and Local Government (2004) *Guidelines on Preparing Action Plans for Social and Affordable Housing 2004 – 2008*, Dublin, Government Publications Office.
- Department of the Environment, Heritage and Local Government (2005) *Local Authority Assessments of Social Housing Needs – 31st March 2005*, Dublin, Government Publications Office.
- Dollard, G. (2003) 'Local Government Finance: the Policy Context' in Callanan, M. and Keogan, J.F. (Eds) *Local Government in Ireland: Inside Out*, Dublin, Institute of Public Administration.
- European Commission (1999) *The European Spatial Development Perspective*, Luxembourg, European Commission.
- Government of Ireland (2004) *All Party Oireachtas Committee on the Constitution, Ninth Progress Report: Private Property*, Dublin, Government Publications Office.
- Indecon (2005) *Review of Local Government Financing*, Report Commissioned by the Minister for Environment, Heritage and Local Government, prepared by Indecon International Economic Consultants in association with the Institute of Local Government Studies at University of Birmingham, Dublin, Government Publications Office.
- Mullins, D. et al (2003) *Non-Profit Housing Organisations in Ireland, North and South: Changing Forms and Challenging Futures*, Belfast, Northern Ireland Housing Executive.
- National Economic and Social Council (2004) *Housing in Ireland: Performance and Policy*, Dublin, NESAC.
- Norris, M. (2005) *Mixed-tenure Housing Estates: Development, Design, Management and Outcomes*, The Housing Unit, Dublin.
- Williams, J, and O'Connor, M (1999) *Counted In: The Report of the 1999 Assessment of Homelessness in Dublin*, Kildare and Wicklow, Dublin: Homeless Initiative.

# Endnotes

## Foreword

- <sup>1</sup> There is a dedicated methodology (known as the 'Louth model') employed by the local authorities to make this estimate. Having estimated the combined social and affordable housing requirement, the demand for affordable housing is subsequently determined in its own right by a specific calculation. A full description of this methodology can be found in 'A model housing strategy and step by step guide to Part V of the Planning and Development Act, 2000' published by the DoEHLG.

## The origins of Part V of the Planning and Development Acts 2000-2004

- <sup>2</sup> Seanad debate 14.10.1999. [www.irlgov.ie/debates-99/s14oct99/sect2.htm](http://www.irlgov.ie/debates-99/s14oct99/sect2.htm)
- <sup>3</sup> IAVI Student Magazine, Issue 2 2003, *Social and Affordable Housing Part V*, Ciaran Ryan
- <sup>4</sup> *CIF notes flaws in 'social' housing* Irish Times 18.11.1999
- <sup>5</sup> Cooke A, *Planning and Development Bill 1999*, Property Valuer, IAVI, Dublin, Autumn 1999
- <sup>6</sup> Supreme Court Judgment on Planning and Development Bill. In the matter of article 26 of the constitution and in the matter of part v of the planning and development bill 1999. Judgment of the Court delivered on the 28th August 2000 by Keane C.J.
- <sup>7</sup> *The Home Builder* Irish Home Builders Association Newsletter November 2001
- <sup>8</sup> Annual Planning Statistics, various years, DoEHLG
- <sup>9</sup> *The Home Builder* Irish Home Builders Association Newsletter November 2001
- <sup>10</sup> *An Agreed Programme for Government between Fianna Fáil and the Progressive Democrats*, 2002, p17
- <sup>11</sup> IAVI Student Magazine, Issue 2 2003, *Social and Affordable Housing Part V*, Ciaran Ryan

## Part V: a beginner's guide

- <sup>12</sup> The Department of Environment circular AHS 2/05, issued on 8th September 2005, relates to the Planning and Development Acts 2000-2004, Part V, Section 96(3)(d)(ii) – 'Profits on Costs'. It states, *inter alia*, that "following representations made by the Irish Home Builders Association, it has been decided that 'profit on costs' in the Section 96(3)(d)(ii) of the Planning and Development (Amendment) Act 2002 should, in addition to contractor's profit, allow for developer's profit, the level of which can be up to 15 per cent depending on a number of factors. While this percentage represents the industry norm, it includes an amount to offset against the level of risk being taken by the developer and local authorities should bear in mind that Part V units, both social and affordable, are effectively guaranteed sales thereby reducing the level of risk involved".

## Discussion and Recommendations

- <sup>13</sup> For a detailed study of local government functions see Callanan, M and Keogan, J.F (Eds.) (2003) *Local Government in Ireland: Inside Out*, Institute of Public Administration, Dublin.
- <sup>14</sup> For example see *CornerStone* magazine, Issue 15, April 2003, p3, *Irish Soothsayers subdued...*



## Notes

## Notes