



Chartered property,
land and construction
surveyors

PART V

NEGOTIATIONS



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Society of Chartered Surveyors Ireland

38 Merrion Square
Dublin 2
01 644 5500

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Shirley Coulter
Chief Executive Officer

Edward McAuley
Director of Practice & Policy

Katie Dempsey
Policy and Research Executive

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STANDARDS AND GUIDANCE

Type of document	Definition	Status
SCSI/RICS practice statement	Document that provides members with mandatory requirements	Mandatory
SCSI/RICS code of practice	Standard approved by SCSI, and endorsed by another professional body that provides users with recommendations for accepted good practice as followed by conscientious practitioners	Mandatory or recommended good practice (will be confirmed in the document itself)
SCSI/RICS guidance note	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners.	Recommended good practice. Members must act within their area of competence and at no time should interpret this Handbook as a step-by-step guide to providing a particular service. It is merely a useful reference document for seeking out more information, or referring to an appropriately qualified and competent professional/surveyor
SCSI/RICS information paper	Practice-based information that provides users with the latest information and/or research	Information and/or explanatory commentary

Introduction

Part V of the Planning and Development Act 2000, as amended by the 2002 (Amendment) Act and the Urban Regeneration and Housing Act 2015, was introduced to provide a designated portion of new housing development for social and affordable purpose (at the time of writing, social housing only) by making land available to councils (local/planning authority) at existing use value (EUV) rather than open market value (OMV; often referred to as development value). (See definitions below.) Other options (subject to agreement between the parties) to satisfy the Part V requirement are also available. Currently, the Part V condition can also be satisfied by the transfer of residential units on the land and/or the transfer of other residential units/lease of residential units, or a combination, to an equivalent value known as net monetary value (NMV; see definitions).

Definitions

Existing use value (EUV) is defined in the Act as “the value of the land calculated by reference to the date that planning permission was granted on the basis that it would have been unlawful to carry out any development on that land other than exempted development”.

Open market value (OMV)¹ is the value of the land/property with planning permission for residential development attached. In negotiations it is often referred to as development value.

Net monetary value (NMV) is the uplift on the existing use value of land, due to the grant of planning permission for residential development. Part V enables the local authority to capture a portion (currently 10%) of this uplift.

Equivalent net monetary value (ENMV) is the amount of net monetary value to be achieved through the delivery of Part V options other than land. For example, if the local authority purchases a sufficient amount of houses within a development to equate to 10% of all the housing plots, the equivalent net monetary value has been achieved. No NMV balancing payment is required.

It is the intention of the Part V condition that the relevant council benefits from a share in the uplift in value (planning gain) arising from the granting of planning permission for residential development. This information paper does not set out to comment on the effectiveness of Part V; its scope is limited to providing high-level guidance to practitioners involved in Part V valuations and negotiations.

This information paper has been produced by a multidisciplinary group of Chartered Surveyors to provide high-level guidance to practitioners involved in the Part V process. It does not seek to replace department circulars or ministerial guidelines, but rather to complement this guidance with a specific focus on the technical aspects of the process.

Legislative background

Part V of the Planning and Development Act 2000 (as amended) is a condition of planning permission on the residential element of developments that are not exempt from the condition: applicants must apply for an exemption certificate before lodging applications in these circumstances (currently applies to a development of nine or fewer residential units, or developments on land of 0.1 hectare or less). Other circumstances exist where this condition will not apply (see s.96(13)(a-d) of the 2002 Act).² Most relevant to practitioners is S.96(13)(b), which deals with the conversion of an existing building or the reconstruction of a building to create one or more dwellings, provided that 50% or more of the existing external fabric of the building is retained. There are various components to the legislation, which are regularly updated.

This information paper does not attempt to describe each of the various components. Rather it advises the practitioner to keep up to date with the legislation at the time of undertaking the instruction.

In addition to consulting the Irish Statute Book for any legislative developments,² practitioners are advised to consult the following document: Part V of the Planning and Development Act 2000: Guidelines issued by the Minister for Housing, Planning, Community and Local Government under section 28 of the Planning and Development Act 2000 (published January 2017), which is available at www.housing.ie. Practitioners should check the Department of Housing website for any further Departmental Circulars, ministerial guidelines or legislative updates.

Practitioners should also consult the website of the Office of the Planning Regulator (www.opr.ie) for updates.

1 Open market value terminology referred to within planning legislation and this reference may differ from RICS Redbook Valuation Standards or other similar standards terminology, which may refer to market value.

2. The consolidated Planning and Development (Amendment) Act 2002 is available at www.lawreform.ie.

Role of valuer

Stage 1: Pre-planning stage

Valuer's advice: At Stage 1, should the applicant consider the transfer of 10% of the land, this 10% will be included in the curtilage of the site but no planning permission is sought on this portion. If agreement cannot be reached on how to satisfy Part V, the matter can be referred to An Bord Pleanála. The applicant can, at any point, propose the option of the transfer of land, which the council must accept. Any option proposed by the council, requires agreement from the applicant.

The price paid to the applicant will be the EUV of the land transferred as at date of grant of planning permission (for land acquired after August 25, 1999).³

Otherwise, the applicant engages with the council on how to satisfy Part V. The options available are defined by the relevant Acts (currently transfer of land/residential units/transfer of other residential units, lease of units, combination).

Stage 2: Planning application stage

Planning application: the applicant is obliged to provide estimated costs of land for transfer (estimate of EUV only) or other options (an estimate of EUV and OMV⁴ would be required to feed into this process.)

However, these figures are subject to adjustment when final permission is granted (adjustments are required to take account of the date of final permission granted).

Stage 3: Planning permission granted with Part V condition attached

The onus is on the applicant to submit final EUV and OMV figures to the relevant council. Considerations to be considered in assessing EUV and OMV include:

- the date of both valuations is the date of grant of planning permission;
- EUV valuation is "existing use value" of land (and buildings thereon) that has a permission for new residential development – in mixed-use developments, EUV is apportioned to reflect the percentage of new residential development in the entire scheme; and,
- OMV is the value of the land with planning permission for residential development attached – in mixed-use developments, OMV is the value of the residential element only.

* Conversion of existing buildings: valuers need to consider whether a proportion of the land/property should be excluded from the EUV and OMV calculation. This arises in a case where the development includes the conversion of an existing building to create one or more buildings provided that at least 50% of the external fabric is retained.⁵

Note: The council will use the agreed EUV and OMV to formulate the NMV. See worked example here.

Calculation of NMV

Example of how EUV and OMV are calculated

The EUV of the site on the date of the grant of planning permission is €100,000 and the OMV/development value of the site on that date is €500,000. The NMV to be achieved by the council, in any agreement other than acquiring 10% of the land, is €40,000 (10% of the difference).

Development value	€500,000
Less existing use value	€100,000
Difference	€400,000
10% = NMV	€40,000

Note: The valuer should advise the applicant to notify the council before any demolition of existing buildings takes place so that a fair assessment of the EUV can be made by the council.

Stage 4: Dispute

After eight weeks from the date of grant of planning permission, where there is a dispute on property values (under section 96(7) of the Act), either party can refer the matter to the Property Arbitrator under section 2 of the Property Values (Arbitration and Appeals) Act 1960.

Note: Disputes on other matters are referred to An Bord Pleanála.

Stage 5: Part V agreement

Once agreement on EUV and OMV is reached between the council and the applicant, the figures are reported to the council's Part V/housing section and form part of the overall Part V agreement. The Part V agreement is signed by all parties.

³ For land acquired pre August 1999, please refer to S.96(4) iii of the Principal Act.

⁴ EUV and OMV are required to estimate NMV (i.e., NMV = OMV less EUV of the land that the planning authority would receive if the agreement solely provided for a transfer of land). The NMV is determined as a percentage of the uplift (currently 10%) on the EUV due to the grant of planning permission for residential development.

⁵ In 2018, a case was referred to An Bord Pleanála to resolve a dispute over whether Part V applied to two linked buildings, one of which was to be demolished and the other retained. The Inspector's Report examines the application of Part V to conversion of existing buildings in detail. The case is available on www.pleanala.ie, search for case number RH91.RH2048

Valuation matters

Establishing the existing use value

To establish the EUV of the land based on the statutory definition set out above, a valuer should estimate the value of the land/property in its existing use on the date of the grant of planning permission.

The existing use of the property is the key element of the definition. The value in its existing use can perhaps be best described by way of examples. If the property is a green field, its value in use will be as a green field, i.e., the value of this may be agricultural or undeveloped land. Crucially, the definition provided in Section 96 of the 2000 Act notes that: "On the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development".

Therefore, no account is to be taken of: (1) zoning; (2) hope value; or (3) any use that would require planning permission. A valuer may therefore consider this element of the definition a special assumption to the valuation.

It follows that if the existing use is another use, other than green field, it should be valued in that use. For example, an industrial property being redeveloped for residential purposes may be valued using comparative analysis, the comparison method and/or the income approach.

The relevant best practice guidelines for the specific asset (where available) from the Society of Chartered Surveyors Ireland (SCSI) and/or academic textbooks and journal articles should be utilised to support the valuer's opinion of value. In line with best practice and to improve transparency, commentary to support the opinion should be provided. The latter part of this definition from the Act, establishing the date of valuation, can be problematic. This is because when valuers are estimating their opinion of existing use, the grant of final permission may not yet have occurred. To circumvent this issue without prejudice, negotiations can be undertaken with the understanding that values may change depending on external events up to the grant of final permission.

Open market value

The value of the "land" with planning permission should be determined in accordance with the statutory definition, i.e., "open market value" of the "land". Practitioners should note that it is a statutory valuation governed by legislation and Government circulars. Valuers can have regard to the RICS guidance note on the subject. At the time of writing, this was the valuation of development property (RICS, 2019) and this is in line with International Valuation Standards (IVS) guidelines. This notes that in the case of the valuation of development property, valuations are normally undertaken in two ways:

- the market comparison approach; and,
- the residual method (see IVS 410 paragraph 40.1)/cash flow approaches.

In practice, the market comparison method is normally the most appropriate to assess the open market value when sufficient comparable evidence is available. This method assigns a market value to the subject land/property with planning permission by comparing it with prices obtained in the market for sale/purchase of similar development sites close to the valuation date.

Residual or cash flow approaches may be appropriate in specific circumstances, particularly where the valuer is dissatisfied with the comparable evidence available in the marketplace. If used, it is recommended to cross-check the outcome with comparable method bids and transactions where they exist, including the subject property.

It is not within the remit of this information paper to provide detailed advice on undertaking these valuations. However, it is important to note that when employing the market approach comparable evidence should be analysed in the context of the subject site.

Net monetary value

The NMV is the uplift on the existing use value due to the grant of planning permission for residential development. Part V enables the local authority to capture a portion of this uplift. The original Act provided for a maximum of 20% (varied from council to council), but it has subsequently been amended to 10% of the uplift. The specific percentage is currently under review and we will therefore not comment further in this version of the information paper. It should be noted that the NMV is calculated by the council following the submission of the OMV and the EUV.

Role of the quantity surveyor

As part of the Part V process, one method of compliance is the sale of residential units to the local authority. These are sold at the construction cost of the unit plus the EUV of the site, plus or minus any balancing payment required to achieve the ENMV. Construction costs are therefore an important component of the Part V process. The fact that every construction site comes with its own unique characteristics adds to the difficulty surrounding accurate estimates of cost. "No matter what city or country you're in around the world, a fundamental truth is that the cost of constructing critical infrastructure and new buildings over the course of a long build phase is notoriously difficult to predict, making the challenge of providing cost and commercial certainty a vital one." (Arcadis, 2017)

Table 1: Example of claimable costs in a Part V agreement.

Nature of costs		
Normal construction costs, including preliminaries (ex. VAT and builder's margin)		140,000
Builder's margin (dependent on tender climate – for purpose of example say 7.5%)		10,500
Development costs (as applicable)		
Professional fees including legal fees	5,000	
Service connections	3,000	
Development contributions	1,000	
Site investigations	500	
Planning fees and charges	500	
Financing charges	5,000	15,000
Sub-total		165,000
Land costs (existing use value)		2,000
Sub-total		167,500
VAT @ 13.5%		22,613
Total		190,113

Notes:

1. Construction costs include costings related to sub-structures; super-structures; external works; site development works; abnormal works; and indirect project costs.
2. Builder's profit should be agreed based on open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works.
3. Attributable development costs include design team fees; service connections; development contributions (if applicable); site investigation; financing charges; legal expenses; Homebond registration (or approved equivalent); and planning fees/charges.

(Department of Housing, Planning and Local Government, 2017)

While acknowledging this, Part V of the Planning and Development Act 2000 and associated amendments guarantees the builder/developer that agreed construction costs will be paid in respect of a set number of residential units. This gives the builder/developer certainty in relation to profit and mitigates economic risks surrounding the sale of the residential units in question. This is reinforced in section 3(5): "The costs, including normal construction and development costs and profit

on those costs, calculated at open market rates that would have been incurred by the planning authority had it retained an independent builder to undertake the works, including the approx. private share of any common development works, as agreed between the authority and the developer" (Department of Housing, 2017). In short, once an agreement is reached between the builder and the local authority, agreed construction costs per unit are guaranteed along with a set profit.

Table 1 provides a detailed sample cost breakdown regarding the compensation payable by the local authority to a builder/developer for a domestic unit. This provides clarity on how that compensation is categorised, showing appropriate cost headings. This level of detail ensures that all associated costs are acknowledged and included. The three guidance notes directly below **Table 1** amplify the content by defining construction costs, builder's profit and attributable development costs.

The construction costs are all encompassing, including the full structure along with site development and common development works. Attributable development costs cover more peripheral areas such as design team fees, service connections, contributions, site investigations, legal and funding areas. The most contentious item on this list surrounds builder's profit and what constitutes a "reasonable" profit.

This is negotiated between the developer and local authority (usually with quantity surveyors acting for both parties) but is generally accepted as 7.5% of the costs. This is half of the 15% profit on costs that reflects the market risks of the project. This reflects a discount on market rates for the local authority. It is considered appropriate to provide a discount on the profit margin to the local authority to reflect the reduced market risk from the guaranteed purchase of the residential units by the local authority.

This discount is separate from the other discounts that apply in a Part V sale. Local authorities will therefore purchase residential units (where the agreement provides for a sale) with discounts on:

1. The site cost (EUV per site as against the development value).
2. The construction cost (lower profit on construction costs).
3. Any balancing payment required to achieve the ENMV.

Therefore, in these cases the local authority would pay the following for each of the agreed residential units. Total from **Table 1** (EUV per site + the agreed construction costs) – plus or minus any balancing payment required to achieve the ENMV.

There are other methods of compliance and each Part V case is unique to the property.

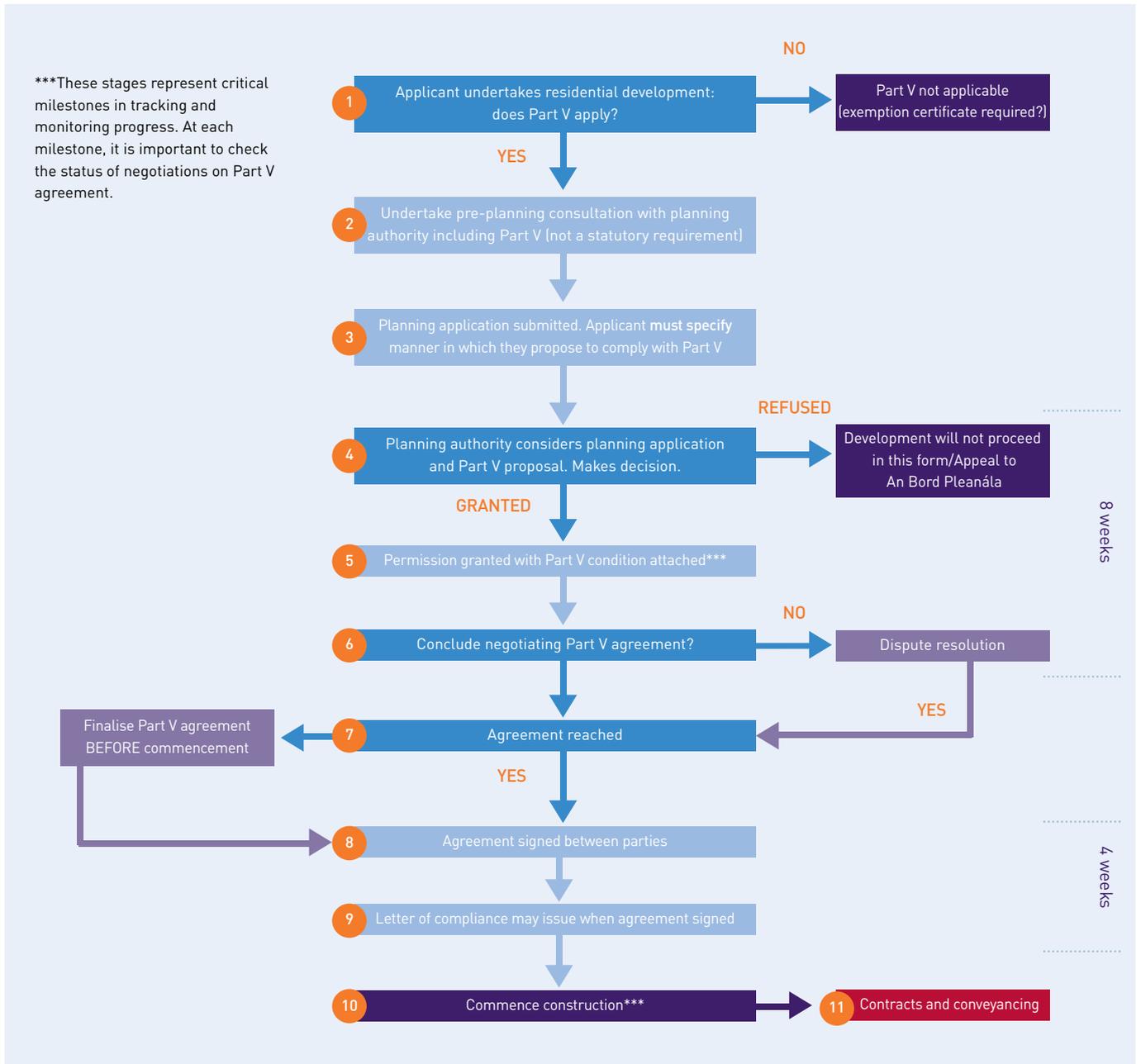


FIGURE 3: Overview of key steps in Part V agreements – best practice Department of Housing, Planning and Local Government, 2017).3

Final stages

Following agreement on the valuation and construction aspects of Part V, the developer and council (or their representatives) will agree the final details of the Part V agreement. There are several different options to comply with this. This section of the information paper is aimed primarily at surveyors and does not set out to advise on the agreement itself. The Housing Agency and Department of Housing provide detailed guidance in this regard, which is updated periodically via circulars and

other methods. We direct you to source the latest versions of these. However, as a guide we include an overview of the key steps in a Part V agreement in Figure 1.

This information paper has been prepared to add transparency to the Part V process. As each Part V case is unique to the property, it is not a one size fits all approach. It is therefore important that relevant experts are engaged to ensure agreements reached are fair to all parties to the agreement.

Further reading

Arcadis. (2017). International Construction Costs 2017: Cost certainty in an uncertain world. London: ARCADIS.

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RICS. (2019). The valuation of development property (1st edition: October 2019). Available from:

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<https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Housing/FileDownload%2C39513%2Cen.pdf>.

Legislation

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<http://www.irishstatutebook.ie/eli/2002/act/32/enacted/en/html>

Planning and Development (Amendment) Act 2015. Available from:

<http://www.irishstatutebook.ie/eli/2015/act/63/enacted/en/html>

Department of Housing. Housing and planning publications available from: <http://housing.gov.ie>

Office of the Planning Regulator. Part V publications available from:

<https://www.opr.ie/subject/part-v/>

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38 Merrion Square
Dublin, D02 EV61
Ireland

+353 (0) 1 644 5500
www.scsi.ie