



An Ghníomhaireacht
Tithíochta
The Housing Agency

Review of Part V of the Planning and Development Act

December 2020



Foreword

The Department of Housing, Local Government and Heritage (DHLGH) requested that The Housing Agency conduct a review of Part V of the Planning and Development Acts 2000 to 2018 in light of the commitment in the current Programme for Government to “*explore expanding Part V to encompass affordable purchase and cost rental units*”. The Agency was provided with Terms of Reference for the review (see Appendix A).

The review was requested to be completed within a short period which limited the opportunity to engage with other stakeholders and represent their views. Part V impacts on many areas of housing and planning policy. The options and proposals presented in this review are based on the considered views of The Housing Agency and its experience of assisting local authorities with the implementation of Part V over many years. Detailed analysis to support these proposals was undertaken where possible. This review identifies several areas which require further review which was not feasible to carry out in the timescale available. The extent of the analysis required in each area will depend on the policy direction that is decided and should serve as a guide to the more detailed policy development work that arises.

Part V refers to Part V of the Planning and Development Acts 2000 to 2018. This legislation provides for local authorities to acquire up to 10% of the land subject to an application for planning permission at less than the enhanced market value of the land as a result of the grant of planning permission. The intention is to utilise such land for the delivery of housing for the purpose of providing accommodation to those households qualified for social housing support. The use of the land for the delivery of housing for social housing support satisfies a policy objective of encouraging integrated development and reducing housing segregation.

When Part V was first introduced in 2000, local authorities were permitted to acquire a maximum of 20% of land at ‘existing use value’. This was subsequently amended to a maximum of 10% by section 31(b) of the Urban Regeneration and Housing Act 2015. This adjustment was broadly concerned with maintaining a level of delivery of housing for social housing support and removing a requirement for the delivery of affordable housing which had been stood down by the government in 2011.

This report is set out in the format described below.



- **Section 1: Background and Context** provides a brief overview of Part V, outlines the principles of Part V and the evolution of the policy to date.
- **Section 2: Options for Consideration** presents three options for Part V going forward and the broad considerations behind each option and draws on the information discussed in Section 3.
- **Section 3: Detailed Considerations under the Terms of Reference** reviews the considerations identified in each of the terms of reference in turn, presenting evidence and outlining areas where further work is required.

Table 1 on the following page sets out three options for consideration for Part V going forward and compares these options to Part V in its previous format before the amendments made by the Urban Regeneration and Housing Act 2015. These options are discussed in greater detail in Section 2.



Table 1: Options for Consideration for Part V

	Pre-2015 Amendments	Option (a) Status quo	Option (b) Increase to 'up to' 20%	Option (c) Increase to 20%
Part V requirement	Up to 20%	Up to 10%	Up to 20%	20%
LA required to justify % Part V requirement in housing strategy	Yes	Yes	Yes	No 20% requirement in all areas – local authority takes only the % of housing required and gets a greater discount
National Part V consistency	No Some local authorities had lower than 20% requirement due to lower housing need	No All local authorities currently specify 10%, but this could change if demand for social housing decreases	No Some local authorities do not have an affordable housing requirement and therefore will specify a less than 20% Part V requirement	Yes 20% requirement in all areas – local authority takes only the % of housing required and, if less than 20%, achieves the full Part V financial benefit with larger discounts
Requirement for social vs affordable	No requirement In practice 38% social and 62% affordable purchase	Exclusively social housing based on Departmental guidance	Minimum of 10% of the net monetary value of site to be used for social housing	Minimum of 10% of the net monetary value of site to be used for social housing
Open to Supreme Court challenge	Deemed constitutional	No	Unlikely	Possibly – advice required
Provisions for land purchased prior to the Act coming into effect.	Specific provision for land purchased before August 1999	Specific provision for land purchased before August 1999	Additional specific provision for land purchased before changes are made public	Additional specific provision for land purchased before changes are made public
Impact on viability of new developments	Unclear due to lack of data on land prices	None	Should not impact viability if residual appraisal is conducted correctly ¹	Should not impact viability if residual appraisal is conducted correctly
Impact on supply of new development land	Unclear	None	Unlikely	Unlikely

¹ Developers should account for a Part V requirement when determining the expected Gross Development Value of a scheme. All-else-equal this should reduce the residual land value and make prudent developers willing to pay less for their sites. From submissions received it appears that this practice is not always observed. Further detail is provided in Section 1.3.



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Section 1: Background and Context

1.1. The Operation of Part V

A primary purpose of Part V of the Planning and Development Acts 2000 to 2018 is to capture a portion of the increase in the land value resulting from a local authority granting planning permission for residential development². Referred to as “Planning Gain”, the intention of the policy is to allow a local authority to purchase a percentage of the land at less than the enhanced market value. Such land would be utilised to deliver housing for the provision of social housing support (referred to as social housing) or for affordable housing delivery.

How does Part V work?

Part V allows the local authority to purchase a percentage of land at existing use value and to use this land for the provision of social housing support and affordable housing. *Existing use value* is the value of the land without the benefit of planning permission and is generally significantly less than the market value, particularly for greenfield sites.

The local authority can then build homes on the land itself or pay the developer to build the homes. Alternatively, the local authority can agree with the developer to buy homes offsite at a discount instead of obtaining land or homes onsite. A Part V leasing option is available which can be considered for Build to Rent developments.

The Part V requirement is currently up to 10% and only applies to sites of 10 or more homes on land zoned for residential development. The local authority is not obliged to purchase 10% of the homes in a development, they can opt to purchase fewer homes at a greater discount (Example 3).

In the period 2017 – 2019, under Part V, 2,689 homes³ have been delivered. This represents just under 7% of new dwelling completions⁴ excluding one-off houses.

The maximum allowable percentage of land that could be acquired by the local authority is stipulated in Section 94(4)(a) of the Act. This requires local authorities to specify in their housing strategies the percentage of land to be reserved under Part V for the provision of social and affordable housing.

² Throughout this document, the term ‘local authority’ is used when the context may refer to its role as a planning authority or a housing authority.

³ Source: Department of Housing, Local Government and Heritage:
<https://www.housing.gov.ie/housing/social-housing/social-and-affordable/overall-social-housing-provision>

⁴ New Dwelling Completions, CSO data. Accessed via The Housing Agency Data Hub:
<https://www.housingagency.ie/data-hub/new-dwelling-completions>



Prior to 2015, local authorities were permitted to specify that up to 20% of the relevant land could be reserved. This was subsequently reduced to 10% as a result of an amendment made by the Urban Regeneration and Housing Act, 2015. The provision of affordable housing was stood down in 2011.

Part V requires that the developer sell the specified percentage of the land to the local authority at existing use value. The existing use value is defined in legislation as the value of the land without the benefit of planning permission, where it could only remain in its current permitted use. For example, the existing use value of a green field site might equal agricultural value. The benefit to be achieved by the State is the difference between the existing use value and the market value of the site with the benefit of planning permission, i.e. the net monetary value. The local authority has several options under Part V to capture the 10% of net monetary value.

Example 1:

A 40-home site has an existing use value (EUV) of €25,000

The market value (MV) of the site is €400,000

The net monetary value (NMV), or “planning gain” is:

$$\text{€400,000} - \text{€25,000} = \text{€375,000}$$

Part V requires that the housing authority captures **10%** of that NMV.

The first option is the most straightforward, it finds the local authority purchasing 10% of the site from the developer at existing use value in order to achieve the net monetary value requirement. The local authority may subsequently develop housing on the site it has purchased. On large sites, option one may be a suitable approach but often, an alternate Part V option is more economical.

Example 2:

A site with planning permission for *40 houses on plots of the same size*, has an existing use value (EUV) of €25,000, a market value of €400,000 and a net monetary value of (NMV) €375,000.

Part V requires that the housing authority captures **10%** of that NMV.

The local authority agrees with the developer to purchase four houses (10% of 40). The method in legislation for calculating the price to be paid for the construction of houses is:

Land (at EUV) + construction costs + a share of infrastructure and site costs + builder's profit.

This achieves 10% of the **equivalent net monetary value** for that site



The second Part V option available to local authorities is to engage the developer to build housing on their behalf as part of the overall development. Under this option the number of houses can vary so long as the price paid results in the local authority achieving the equivalent of 10% of the net monetary value of the land.

The construction cost paid should be equivalent to the costs that the local authority would pay had it retained an independent builder to undertake the construction. Example 2 is a straightforward site with an even number of properties, on similar sized plots. Purchasing 10% of the properties is equivalent to purchasing 10% of the land and achieves the Part V requirement without having to consider the market value of the site.

Most developments have properties on differing plots sizes, or the number of properties is not evenly divisible by 10.

Example 3:

A site with planning permission for *39 houses on plots of differing sizes*, has an existing use value (EUV) of €25,000, a market value of €400,000 and a net monetary value of (NMV) €375,000.

Part V requires that the housing authority captures **10%** of that NMV.

The local authority agrees with the developer to purchase three houses. The local authority calculates that this is equivalent to capturing 8% of NMV of the site. The method in legislation for calculating the price to be paid for the construction of the houses is the same as in Example 2.

The local authority agrees with the developer that the remaining 2% of the NMV for the site will be achieved as a discount on the construction costs which equates to €7,500. This is discounted from the construction cost of the three houses purchased by the local authority.

Therefore 10% of the **equivalent net monetary value** is achieved for the site.

Where a development delivers housing that is considered unsuitable for social housing support because of the cost or other aspect of the housing or site location, the local authority can agree for the developer to satisfy the Part V condition using one of the other options in the Act. This may be by way of acquiring houses off-site with the financial arrangement achieving the equivalent net monetary value.

1.2. Local authority housing strategies, development plans and Part V

Upon commencement of Part V on 1st November 2000, the proportion of a site subject to a planning application which could be purchased by a local authority at existing use value was



set at 'up to' 20%. The responsibility of specifying the actual percentage was left to each local authority to be laid out in their housing strategies', basing their figures on an assessment of the social and affordable housing needs in their area. In the main, most local authorities demonstrated a sufficient housing need to require the full 20% specified as permissible. In many cases, local authorities included a general statement that the percentage of land required would be used for social and/or affordable housing.

Where a local authority was unable to justify in their assessment the need in its area for 20% of new housing to be reserved for social and/or affordable housing, it specified a lower percentage. As house prices and the demand for affordable housing declined in the 2010s, a proportion of local authorities reduced their Part V requirement. One example is Louth County Council which set a 20% Part V requirement in its housing strategy written in 2007⁵ and reduced it to 12% in its subsequent housing strategy written in 2012⁶. In such cases where local authorities specified a lower Part V percentage, the State did not obtain the full 20% of "planning gain" envisaged in the legislation.

The provision of affordable housing was stood down in 2011 as part of the government's Housing Policy Statement⁷. Circular Housing 11 of 2012 advised local authorities that, in light of market conditions and the financial position of the Exchequer, Part V obligations should be discharged through mechanisms that place no additional funding pressure on local authorities. These were suggested as financial contributions, a reduced number of properties or lands in lieu. Circular Housing 12 of 2015 rescinded the 2012 circular and advised local authorities to use Part V to maximise the potential for the immediate delivery of social housing support with no reference to affordable housing. The Department currently has no funding mechanism for the delivery of affordable housing under Part V.

Following the introduction of the Urban Regeneration and Housing Act in September 2015, the maximum Part V percentage which a local authority could require was lowered to 10%. In practice this meant that while local authority housing strategies written pre-2015 still specified a higher percentage, any Part V agreements made after this date could not exceed 10%.

Currently, most housing strategies have been updated to reflect the 2015 amendment to 10%. However, unlike in 2015, if it is decided to increase the Part V requirement to 20%, the increase could not take effect in local authorities until their individual housing strategies reflected the change. This is because the 2015 amendment conflicted with and overrode existing development plans but to the benefit of developers. Any current development plans

⁵ Louth County Council, 2009, *Development Plan, Chapter 5 Residential and Community Facilities* <https://www.louthcoco.ie/en/publications/development-plans/louth-county-council-development-plans/county-louth-s-new-development-plan-2009-2015.pdf>

⁶ Louth County Council, 2015, *Development Plan, Appendix 3:* <https://www.louthcoco.ie/en/publications/development-plans/louth-county-council-development-plans/volume-2b-appendices-3-17-.pdf>

⁷ DHLGH, 2011, *Housing Policy Statement – June 2011*. <https://www.housing.gov.ie/file/1440>



with a 10% requirement would merely sit within a legislative requirement of ‘up to’ 20%. This conflict is further examined in Section 3.8.

1.3. Developers and Part V

Where a local authority stipulates a Part V requirement of 10% in its development plan, all developers are cognisant of their obligation to provide 10% of residential land purchased for development, at existing use value to that local authority. That is to say, there is certainty on the Part V policy and developers are aware of the requirements on them.

It is expected that developers would conduct a residual appraisal when procuring land, factoring their Part V obligation into the purchase price of the land. Assuming this approach is adopted, the remaining **costs of development and associated commercial decisions for the developer should remain unchanged**. As such, **Part V should have the effect only of reducing the value of the land for the landowner**, who still benefits from the planning gain.

The Part V legislation allows that the uplift in land values from the granting of planning permission be shared for the benefit of the wider community in the form of the delivery of social and/or affordable housing in more integrated developments. Despite this, submissions from industry bodies⁸ as part of the 2014 Part V review conducted by The Housing Agency noted that developers habitually purchase sites as they become available and in a strong housing market they often pay the asking price or exceed it, particularly in the case of serviced lands with planning permission. The landowner effectively achieves 100% of the planning gain from the sale of the land and the developer subsequently endeavours to recover the land cost when setting sale prices.

Based on these submissions, it appears that certain developers regard Part V as an additional cost on the delivery of housing and attempt to recover this cost via the sales price. This view is evident in the Society of Chartered Surveyors’ (SCSI) Cost of Housing Delivery Report 2020⁹ which adds a €5,300 “Part V impact per private house” onto the cost of delivering a new home. Where this approach is taken, the additional cost could be more accurately classified as developer premium.

1.3.1. Part V and Risk

Planning risk refers to the possibility that a developer may be restricted by planning to deliver fewer units on a site than they had anticipated. Notably, this does not apply to sites that are

⁸ Property Industry Ireland, 2012, *Planning a Better Future* (page 72):
<https://www.propertyindustry.ie/Sectors/PII/PII.nsf/vPages/Publications~planning-a-better-future-19-06-2012!OpenDocument>

⁹ The Real Cost of New Housing Delivery, SCSI Cost of Housing Delivery Report 2020,
https://www.scsi.ie/documents/get_lob?id=1551&field=file



purchased with planning permission already in place, and such sites have tended to attract the most competitive bidding¹⁰.

When developers consider buying a site, they typically carry out a residual appraisal. This begins with an anticipated Gross Development Value (GDV) for the scheme that is, the open market value of the development from the sale of all of the housing once it is complete. From this they will subtract development costs that will be incurred along the way, including professional fees, labour, materials etc. Critically, they will also subtract their required developer's profit which can vary from scheme-to-scheme, but which is typically circa 10-15%. The residual is what they can then prudently bid for the site.

The developer's margin in the above calculation compensates him/her for all the risks that are being taken-on at the outset of a development. Developers can mitigate the risk of an adverse planning decision by using their judgement and knowledge of the planning system at the site acquisition stage. Any remaining risk should have been allowed for in the margin, and, if this gets eroded, the developer should bear this cost.

Notably, planning risk exists independently of Part V and the Part V requirement neither amplifies nor reduces this risk.

A separate question has arisen about whether an increase in the Part V requirement would result in developers overpaying for sites and passing this cost on to consumers by charging higher prices for the privately sold homes in their schemes. As noted above, according to industry submissions, some developers are already paying excessively for sites at existing Part V requirements, so it is not clear how increasing the Part V requirement would exacerbate this. Moreover, overpaying for a site does not automatically enable a developer to recoup his/her costs by charging more for the privately sold units. The price of such units will be dictated by what the market can bear. In other words, if developers could be charging more for the private units they would already be doing so.

If developers need to achieve a particular price point that is above what the market will bear, their option is to postpone development until the market rises or seek market interventions to increase the demand side capacity to purchase. In either case, it is likely that developers who have not acted prudently in respect of site purchase price may continue to suggest that Part V is contributing to viability challenges for sites they currently own and that any increase to Part V will be a further risk to supply.

¹⁰ Irish Times, 2020, *Ongoing housing shortage drives demand for development land*: <https://www.irishtimes.com/business/commercial-property/ongoing-housing-shortage-drives-demand-for-development-land-1.4433042>



Section 2: Options for Consideration

This review presents three options for consideration:

- (a) Status quo:** Part V requirement remains at a maximum of 10%, exclusively for social housing
- (b) Increase Part V to ‘up to’ 20% for social and affordable housing:** a return to the pre-2015 situation, with specific changes recommended
- (c) Increase Part V to 20% for social and affordable requirements:** break the link between the percentage planning gain and the requirements of the housing strategy

The distinction between options (b) and (c) is subtle but has significant implications. Under option (b), local authorities will be required to justify in their housing strategies, that they have a sufficient social and/or affordable housing need in their areas to necessitate a 20% Part V requirement.

Under option (c), a 20% Part V condition would be required on every applicable development, in every local authority area. If a local authority did not require 20% of the land or new homes for social or affordable housing, they would take the actual proportion of land or homes it requires and apply any remaining net monetary value (NMV) as a discount on construction costs. The method of applying the residual NMV to construction costs is set out in Example 3 above. In this way, the State would capture 20% of the planning gain from every applicable site which would seem to be a fairer approach in that all developments are treated equally.

All three options are outlined in greater detail below.

2.1. Option (a): Status Quo

Maintaining the status quo and retaining a Part V requirement of ‘up to 10%’ exclusively for social housing support would afford distinct advantages.

The current Part V structure is well understood by local authority housing staff, planners and developers and is working in practice. While construction activity was recovering in the period from 2014 onwards¹¹ the delivery of Part V properties also increased and, after the amendments in 2015, showed a significant annual increase over the period 2017 to 2019 as set out in Table 2 below:

¹¹ Source: CSO:
<https://www.cso.ie/en/releasesandpublications/er/ndc/newdwellingcompletingsq32020/>



Table 2: Part V Delivery 2017 - 2019

Part V Delivery 2017-2019 ¹²			
Year	2017	2018	2019
Part V Properties	522	828	1,326
% increase over previous year		59%	60%

Any amendment to Part V policy could risk delaying housing delivery as the sector comes to terms with its implications. An additional advantage to maintaining the status quo is that any land purchased since 2015 has been on the understanding of a 10% Part V requirement and should have been priced accordingly.

In considering whether to maintain the status quo, it is useful to examine the basis for the determination of the current Part V requirement. Following a 2014 review¹³ of Part V conducted by The Housing Agency, the Urban Regeneration and Housing Act 2015 reduced the maximum percentage of land that could be acquired under Part V from 'up to 20%' to 'up to 10%'. Beyond recommending this decrease to 'up to 10%' the Housing Agency's review also proposed that Part V should be exclusively for social housing support.

The reasoning behind this recommendation centred on the indefinite suspension in 2011 of the State's affordable housing programmes and the substantial improvement in housing affordability over the previous six years.

In addition, the review found that in many local authorities the proportion of properties acquired for social housing support was much lower than 10%, often due to the favouring of affordable purchase delivery by developers. The proposal to require up to 10% of properties for social housing support, but no affordable homes, was seen as a way of securing the delivery of social housing support in the economic circumstances that prevailed, as was the original intention of the legislation, delivering social integration and sustainable mixed tenure communities across the country.

In light of recent commitments to the delivery of affordable housing along with funding commitments in Budget 2021 for a new shared equity affordable purchase scheme, if Part V is to play its part in the provision of affordable housing, maintaining the status quo would represent a missed opportunity to potentially increase the delivery options for affordable housing.

¹² Source: Department of Housing, Local Government and Heritage:
<https://www.housing.gov.ie/housing/social-housing/social-and-affordable/overall-social-housing-provision>

¹³ The Housing Agency, 2014, Part V Review



2.2. Option (b): Increase Part V to 'up to' 20% for social and affordable housing

Option (b) would constitute an effective return to the Part V requirements which were in place before the commencement of the Urban Regeneration and Housing Act 2015, with specific changes recommended which are listed in Section 2.2.2.

The Part V requirement would revert to 'up to' 20%, with each local authority required to determine their social and affordable need in their housing strategy as part of their development plan. A return to an increased Part V requirement would permit the reinstatement of affordable housing provision under Part V. As all local authority housing strategies currently indicate a need for a 10% Part V requirement exclusively for social housing support, it follows that a 10% requirement would not be sufficient to allow for the provision of affordable housing, except at the expense of social housing support.

A Part V requirement of 'up to' 20% has the additional advantage that it has been tested in the Supreme Court and would not be open to challenge for its compatibility with the constitution.

2.2.1. Affordability

A key component of this review is to determine if there exists a sufficient affordability issue to support an increase in the Part V requirement to allow for the provision of affordable housing.

In analysis undertaken by The Housing Agency of the 31 local authority areas, median household incomes in 17 of these areas are lower than necessary to obtain a mortgage to purchase a median priced property in said area. The most significant affordability pressures for first-time buyers are in Dublin, the surrounding Mid-East region,¹⁴ the regional cities, and large urban centres.

This is shown in Figure 1 which presents both the median gross annual household income per local authority area, and the income required to purchase the median priced home in each area under current macroprudential rules for Q1 2020¹⁵. In Dún Laoghaire-Rathdown, for example, the median income is the highest in the country at €75,000, but the high property prices mean that the minimum gross annual household income required to obtain a mortgage for the median priced property in that area is €141,107. This indicates a significant affordability challenge in this area given the substantial difference between the median household income and the income required to purchase a property at the median price.

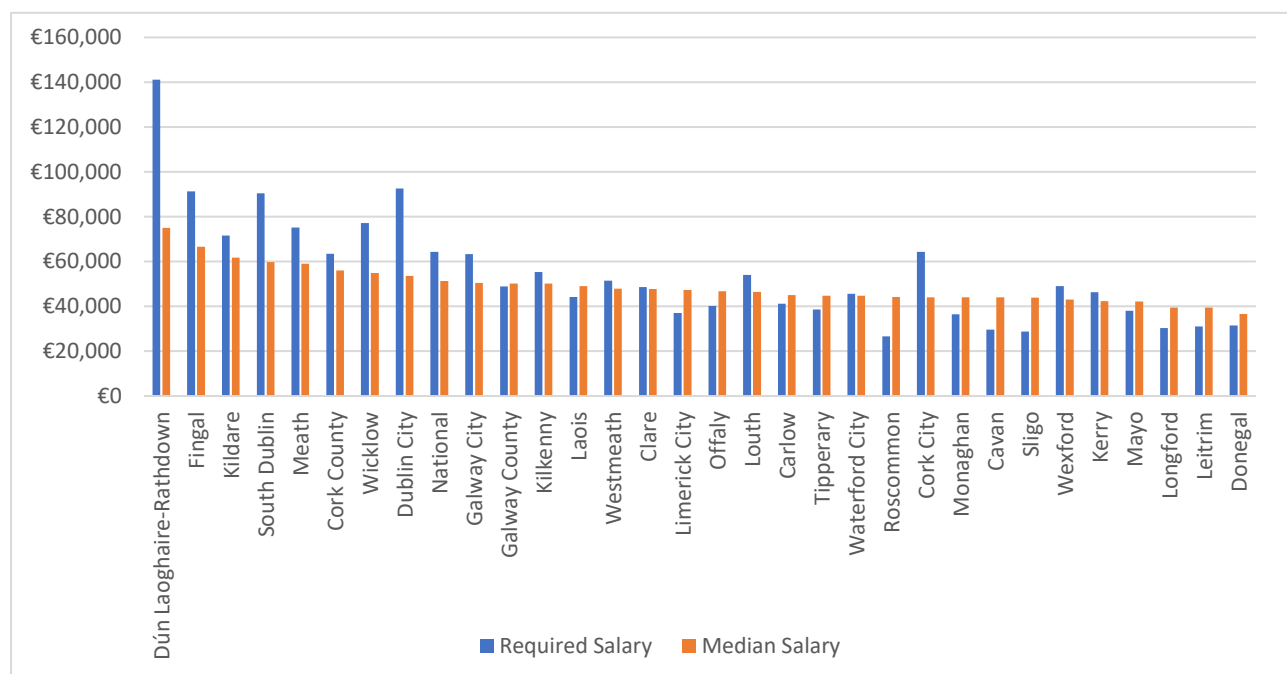
By contrast, in Carlow, the median household income is €45,071 which exceeds the threshold of €41,143 necessary to secure a mortgage on the median property.

¹⁴ As defined by the CSO, the Mid-East region comprises Kildare, Louth, Meath, and Wicklow.

¹⁵ This analysis assumes a first-time buyer paying a 10% deposit and obtaining 3.5 times their gross income.



Figure 1: Median Household Income vs Required Household Income for Median Property, Q1 2020



Sources: Calculated using

CSO, 2020, Market-based Household Purchases of Residential Dwellings by Dwelling Status, Stamp Duty Event, RPPI Region, Type of Buyer, Month and Statistic, HPM03,

CSO, 2020, EHQ03: Average Earnings, Hours Worked, Employment and Labour Costs by Economic Sector NACE Rev 2, Type of Employee, Quarter and Statistic

CSO, 2016, Household Median Gross Income by County

This analysis, along with further work detailed in Section 3.1 of this review, demonstrates the extent of the current affordability issues. This data also highlights the variation in affordability challenges between local authority areas. Section 3.5 of this review explores the differing affordability challenges across the country.

The data and analysis demonstrate an affordability challenge in some, but not all, areas of the country indicating the need to facilitate varying levels of response under Part V. In the view of The Housing Agency, this is best achieved through the current system of housing strategies and development plans, where each local authority determines the requirement for affordable and social housing in its area and calculates the appropriate Part V requirement. However, it should be noted that where a local authority determines that the requirement of social and affordable housing is less than 20% this leads to a lower Part V requirement resulting in less planning gain captured.



2.2.2. Changes required to Part V under Option (b)¹⁶

There are a number of changes to Part V which should be considered as part of Option (b):

1. A minimum of 10% of the equivalent net monetary value to be used for social housing support.

Specifying a minimum level of social housing provision is necessary to protect the supply of social housing support and ensure that it is not displaced by affordable housing.

The Summary of Social Housing Assessments 2019¹⁷ identified that 68,693 households nationwide were qualified for social housing support but whose housing need was not being met. Every local authority area has an identified need for social housing support, ranging from 16,529 households on the waiting list in Dublin City Council to 302 households in Leitrim County Council.

Where a local authority has no requirement for the provision of properties for social housing support in a local area due to an over-concentration of existing social housing, an exception for that area can be specified in the development plan. For example, the 2011 development plan for Dublin City Council specifies a Part V exemption for Ballymun. Otherwise a local authority should not favour affordable housing over social housing support in Part V negotiations and agreements.

The extent to which local authorities previously apportioned social and affordable housing within individual agreements cannot be determined from the data available. However, an analysis of Part V delivery from 2006 to 2011, prepared by DKM¹⁸ showed that Part V consistently failed to provide the volume of social housing support expected. Only 38% of properties provided under Part V were for social housing support and only 12.6% of total housing completions (excluding one off houses) in 2008 were Part V. This acknowledges that developers favoured affordable housing over social housing support. Given the likely ongoing need for social housing support, it is essential that this practice is avoided. This practice is further examined in Section 3.7.

2. Direct sales for affordable purchase homes.

The affordable dwelling purchase arrangements set out in the Housing (Miscellaneous Provisions) Act 2009 provide for local authorities to enter into direct sales agreements with developers for affordable purchase homes under Part V.

¹⁶ These changes should also be considered as part of Option (c)

¹⁷ Housing Agency, 2019, *Summary of Social Housing Assessments 2019*.

<https://www.housingagency.ie/publications/summary-social-housing-assessments-2019>

¹⁸ DKM and Brady Shipman Martin, 2012, Review of Part V of the Planning and Development Act, 2000. Prepared for The Housing Agency.



Using a direct sales mechanism would reduce the risk to local authorities of losses on unsold affordable homes. This is explored further in Section 3.4.

3. In high-priced developments, achieve affordable housing by taking fewer properties or purchasing off-site.

It would be preferable for local authorities to achieve affordable housing through Part V without the need for further subsidy where possible. This could be achieved by spreading the equivalent net monetary value over a smaller number of properties, or by purchasing properties on a site with lower construction or development costs. This is covered in greater detail in Section 3.3.

4. Cost rental as an option

Cost rental has never been available to local authorities as an option in providing affordable housing under Part V. The introduction of cost rental would require a change to the legislation and would provide local authorities with greater flexibility in providing affordable housing. Using Part V housing for cost rental would not be appropriate in all developments and would be on a case by case basis, depending on the needs identified by the local authority, the demand in the local rental market, the capital cost of the Part V housing and the scale of the development or proximity to other cost rental schemes. For this option to be successful in providing a reasonable scale to the delivery of cost rental housing, it will need the additional support of low-cost funding structures. Further information on cost rental and Part V is provided in Section 3.6.

5. Encourage more social housing if justified by the HNDA

Where a local authority conducts a Housing Need and Demand Assessment and determines a high need for social housing support, it may be appropriate that more than 10% of the equivalent net monetary value of the site be used towards the provision of social housing support, subject to sustainable community considerations. Guidance for local authorities could be issued to this effect.

Of the suggested changes listed above, the first is arguably the most critical. In the 2000 – 2011 period, many local authorities, in setting out a 20% Part V requirement in their housing strategies, did not specifically apportion this 20% requirement between social and affordable housing. The decision on the proportion of social versus affordable housing to provide appears to have been on a case by case basis. In many local authorities the number of properties acquired for social housing support was much lower than 10% often due to the favouring of affordable purchase delivery by developers¹⁹.

¹⁹ The Housing Agency, 2014, Part V Review (page 3)



If this change were to be implemented, there would be no obligation for a local authority to purchase 10% of the properties in a development for social housing support, only to ensure that 10% of the equivalent net monetary value was used for social housing support. This would prevent developers negotiating down the proportion of properties for social housing support in favour of affordable purchase properties. While certain developments may deliver housing that is considered unsuitable for social housing support because of the cost or other aspect of the housing or site location, for the majority of developments, local authorities with an identified need for social housing support should be encouraged to take as many properties as possible under Part V. This achieves the twin policy objectives of delivering social housing support and creating integrated communities.

2.3. Option (c): Increase Part V to 20% for social and affordable requirements

Option (c) represents a slightly different path for Part V. Under Option (b), a local authority is required to justify in its housing strategy why, based on their assessment of housing need, it is adopting a particular Part V requirement. Under Option (c), the focus is on capturing 20% of the planning gain for the State on every applicable site, in every local authority area. The link between the Part V requirement on each site and the social and affordable requirements of the local authority as set out in its housing strategy would therefore be broken.

Previously when the Part V requirement was 'up to' 20%, if a local authority did not require 20% of new properties in their areas for social or affordable housing, they stipulated a lower Part V requirement in their housing strategies. In this way the State did not capture the full 20% of the planning gain.

Under Option (c), if a local authority did not require 20% of new properties for social or affordable housing, they would take as many properties as required and apply any remaining net monetary value (NMV) as a discount on construction costs. The method of applying the residual NMV to construction costs is set out in Example 3 on page 7. In this way, the State would capture 20% of the planning gain from every applicable site.

Local authorities would continue to calculate what proportion of new sites/housing (up to and including 20%) that they wished to take for Part V social and/or affordable housing, and this would inform negotiations with developers.

In addition, all changes recommended under Option (b) in Section 2.2.2 should also be considered for Option (c), specifically

- A minimum of 10% of the equivalent net monetary value to be used for social housing support,
- Direct sales for affordable purchase homes,
- In high-priced developments, achieve affordable housing by taking fewer properties or purchasing off-site,



- Introducing cost rental as an option for housing acquired under Part V, and
- Encouraging a greater than 10% level of social housing support provision where appropriate.

2.3.1. Advantages of Option (c)

1. Certainty and fairness for landowners

A 20% Part V requirement on all applicable sites across the country would represent equal treatment for landowners, regardless of the location of a development. Under Option (b), a landowner in one part of the country may be subject to a 20% Part V requirement whereas a landowner in another local authority area nearby may be subject to a 15% Part V requirement.

2. Increased affordability

A 20% Part V requirement in all areas would allow local authorities to achieve greater discounts on affordable properties. For example, a local authority with a 15% social and affordable housing requirement would use the additional 5% equivalent net monetary value as a discount on the construction costs of the affordable properties. If a local authority had no requirement for affordable housing it could achieve a greater discount on the properties acquired for social housing support.

3. Removes the necessity to reduce Part V requirement if property prices fall

If property prices fall and affordable housing is no longer required, the Part V requirement can remain at 20% and the residual equivalent net monetary value would be applied as a discount on social housing support. In addition to benefitting the exchequer and insulating somewhat the supply of social housing support from changes in house prices, this would increase certainty for developers across the economic cycle.

4. Provides flexibility to local authorities

As per Sections 2.2.1 and 3.1, housing affordability challenges are concentrated in certain parts of the country, most notably Dublin and the Mid-East region and other urban centres. By contrast, properties in more rural areas are often affordable to the majority of the population.

Under Option (c), the local authority is not obligated to use Part V for the provision of affordable housing. Instead, a local authority can seek up to the full 20% of new properties in their areas for the provision of social housing support. Alternatively, and depending on local needs, the authority could accept a smaller number of



homes with the remaining net monetary value (NMV) used as a discount on construction costs.

It should also be noted, however, that the level of new home construction in areas with lower property prices is quite minimal. For instance, in 2019, the median price for new homes was under €175,000 in five counties²⁰; the income necessary for a first-time buyer to get a mortgage on such a property was a maximum of €45,000. In total, only 284 new properties were sold across those five counties in 2019, and it is likely that many of these were one off houses, or in developments below the threshold subject to Part V.

2.3.2. Disadvantages of Option (c)

The main disadvantage of Option (c) is that, in breaking the link between planning gain and the social and/or affordable housing requirements of a local authority, it could be said to differ from the original intention of the legislation and therefore be open to Supreme Court challenge. **Legal advice on this issue is strongly recommended.**

Another potential disadvantage might arise if a developer is insistent upon selling 20% of a site to the local authority, but the local authority only has a 10% housing requirement. Section 96(11) of the Planning and Development Act 2000 (as amended) does envision a situation where land acquired by a local authority under Part V is no longer required for its intended purpose. A local authority can use this land for other purposes connected with its functions, or to sell the land on the open market and use the proceeds towards the provision of social housing support.

2.4. Additional Considerations for Options (b) and (c)

If either Option (b) or Option (c) is considered appropriate, there are certain suggested actions which would be common to both:

1. **Include a provision for land already purchased.** When the Planning and Development Act 2000 was introduced, it included provisions for land purchased before 25 August 1999. The Supreme Court decision in 2000 referenced these provisions in their decision that Part V was not ‘arbitrary, unfair or based on irrational considerations’. If an increased Part V requirement is introduced, provisions should be made for landowners who purchased land before the increase was announced. These provisions could take a similar form to the provisions in the 2000 Act whereby the developer is compensated for the land based on the date the land was purchased. For example, a local authority with a 20% Part V requirement may be required to purchase 10% of the site at existing use value and the additional 10% at the price the developer

²⁰ Leitrim, Longford, Donegal, Sligo and Cavan



paid for it. An alternative approach would be to have a 10% Part V requirement for existing landowners and a 20% Part V requirement for land transacted after a specified date that the increase was announced. Further detail on this is provided in Section 3.2.

2. **Examine the possibility of including a “sunset clause” for transition arrangements.** The transitional arrangements for a Part V increase could be set to “expire” after five years, in 2025 or 2026. After this date, the local authority could purchase 20% of all applicable sites at existing use value, regardless of when the land was purchased. In theory, this could incentivise developers with existing planning permissions to commence construction before the provision expires. This would require legal advice as it is potentially open to legal challenge. Further detail on this is provided in Section 3.2.
3. **Signal the transition arrangements to the sector.** The construction sector has been aware of the potential for a Part V increase since the publication of the Programme for Government in June 2020. Since then, there has been increasing uncertainty among developers, investors, and financiers about a potential increase in the Part V requirement. If this uncertainty were to continue indefinitely, it could impact on decisions made by these parties about whether to purchase sites, commence development or the rates charged for development finance. This uncertainty will continue until certainty is restored by the confirmation of the nature of any increase and the transitional arrangements. If Option (a) is chosen and the status quo is to be maintained, this should be confirmed as quickly as possible.
4. **A communications campaign should be undertaken** to explain to developers that Part V should be factored into account when purchasing land. While outside the scope of this review to examine, it may be the case that certain developers do understand how Part V should be applied but are paying excessive prices for land in any event with the expectation that they can sell houses at a sufficiently high price to recover the cost or hold the land until market prices rise sufficiently or other policy interventions allow the sale of the houses at the price they need to achieve.

Regardless of whether any change is made to Part V, it is clear that there is widespread misrepresentation within the sector of the principles underpinning Part V. The practice of adding Part V as a land cost to private homes should be challenged.

5. **Expand Part V requirement to all developments above a certain number of homes.** Currently developments on land not zoned for residential development are exempt from Part V, regardless of the size of the development. Where developments above the minimum number of homes for Part V are granted planning permission, the Part V requirement should apply, whether or not the site had been ‘zoned for residential use’ in the local authority’s development plan. This point is explored further in Section 3.9.



2.5. Consideration of Increasing the Part V Requirement above 20%

Following the passing of the Planning and Development Bill 1999 by both Houses of the Oireachtas in June 2000, President Mary McAleese referred Part V of the Bill to the Supreme Court for a decision on its compatibility with the constitution.

The Supreme Court ultimately found that none of the provisions of Part V of the Bill were repugnant to the Constitution.

The court was satisfied that the Oireachtas was entitled to use the planning machinery to achieve the objectives of providing affordable housing and to encourage integrated housing development. The main element of Part V which was considered by the court was whether paying property owners the existing use value for the land rather than the market value of the land constituted an unjust attack on property rights.

In the decision, when considering whether Part V restricted the rights of landowners, the court applied a “test of proportionality”, an approach generally taken by the courts. To pass the proportionality test, the measures must:

1. “(a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;
2. (b) impair the right as little as possible; and
3. (c) be such that their effects on rights are proportional to the objective;”

see re Article 26 and the Planning and Development Bill, 1999 [2000] 2 I.R. 350.

Previous decisions relating to property rights have stated:

“If the State elects to invade the property rights of the individual citizen, it can do so only to the extent that this is required by the exigencies of the common good. If the means used are disproportionate to the end sought, the invasion will constitute an 'unjust attack' within the meaning of Article 40, s. 3, sub-section 2.” *See Iarnród Éireann v. Ireland [1996] 3 I.R. 321*

The decision makes references to the then 20% Part V requirement and that the landowner can continue to enjoy the land value gain from planning on 80% on the land. The court was satisfied that the scheme passed the proportionality test and that, regarding the impact of Part V on the rights of landowners:

“the court is satisfied that they impair those rights as little as possible and their effects on those rights are proportionate to the objectives sought to be attained.” *see re Article 26 and the Planning and Development Bill, 1999 [2000] 2 I.R. 354*

It is uncertain whether a new bill which increased the Part V requirement above 20% would pass the same proportionality test. Legal advice on this matter is recommended in advance of any further work undertaken on increasing Part V above 20%.



Section 3: Detailed Considerations under the Terms of Reference

In this section, each of the nine components of the terms of reference (TOR) for this review will be set out in turn and the issues raised in each will be more closely examined.

3.1. TOR 1: Affordability

TOR 1: Identify the extent to which it is considered that an affordability issue arises that would support a Part V intervention.

3.1.1. Price changes over time

The period between 2015 and mid-2018 was characterised by rapid house price inflation and very strong rental price growth – see Figures 2 to 5 below.

Nationally, house price inflation (HPI) peaked at 13.4% in April 2018, but price inflation has been progressively slowing since then and prices actually fell by 0.4% in the year to October 2020. In terms of rents, Residential Tenancy Board (RTB) data shows that inflation slowed from 10.0% per annum in Q4 2015 to 1.4% in Q3 2020.²¹

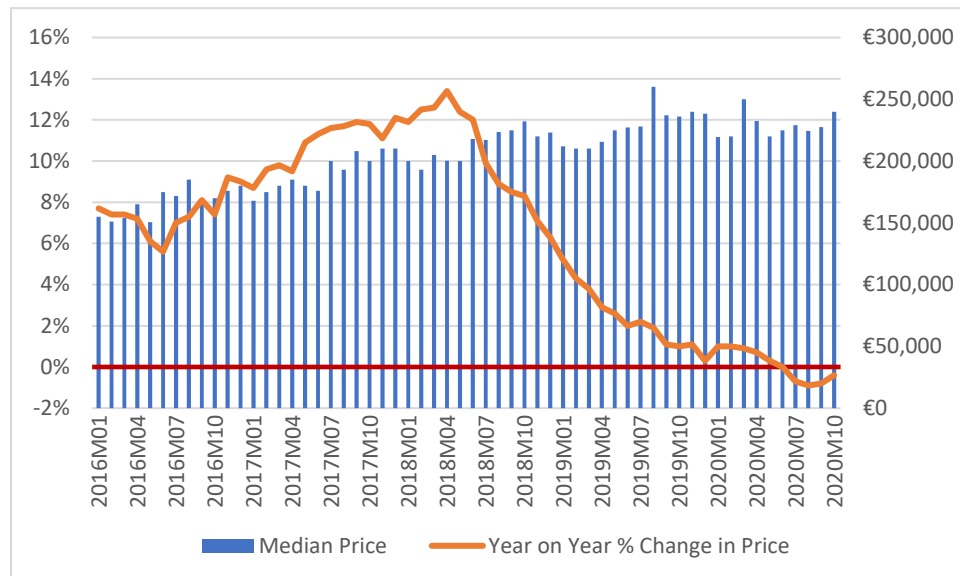
In Dublin the trend has been similar. HPI peaked at 13% per annum in April 2018 but fell quickly thereafter, with price growth turning negative in May 2019. Average prices fell by 1.2% between October 2019 and October 2020. Rental growth has fallen from a peak of 9.2% in Q3 2018 to 0.9% at present.

However, while the market may not currently be characterised by increasing prices, the legacy of inflation is high prices, which creates affordability challenges for many. Figure 2 and Figure 3 show the median house prices nationally and in Dublin, along with the rolling 12-month inflation between 2016 and 2020. While inflation has slowed rapidly since 2018, and prices have begun to fall in recent months (i.e. negative inflation), prices are at a high level. Figure 4 and Figure 5 illustrate the same pattern in the rental market.

²¹ Although it could be argued that the figures from Q2 2020 onwards may be impacted by the COVID19 pandemic and thus not reflective of the underlying market forces, the overall downward trend was in place for some time prior to the lockdown and other public health measures.

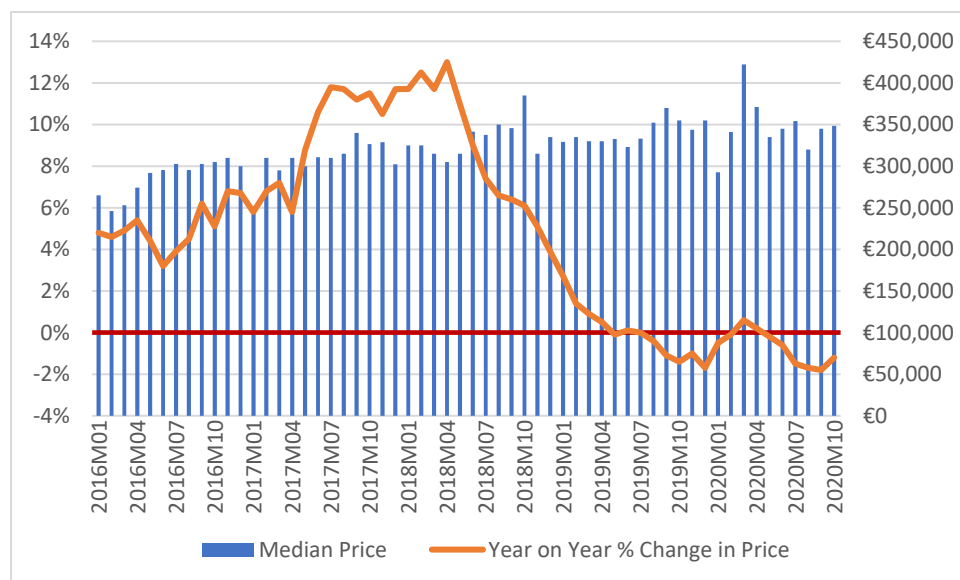


Figure 2: Median House Prices and Inflation – Nationally 2016-2020



Source: CSO

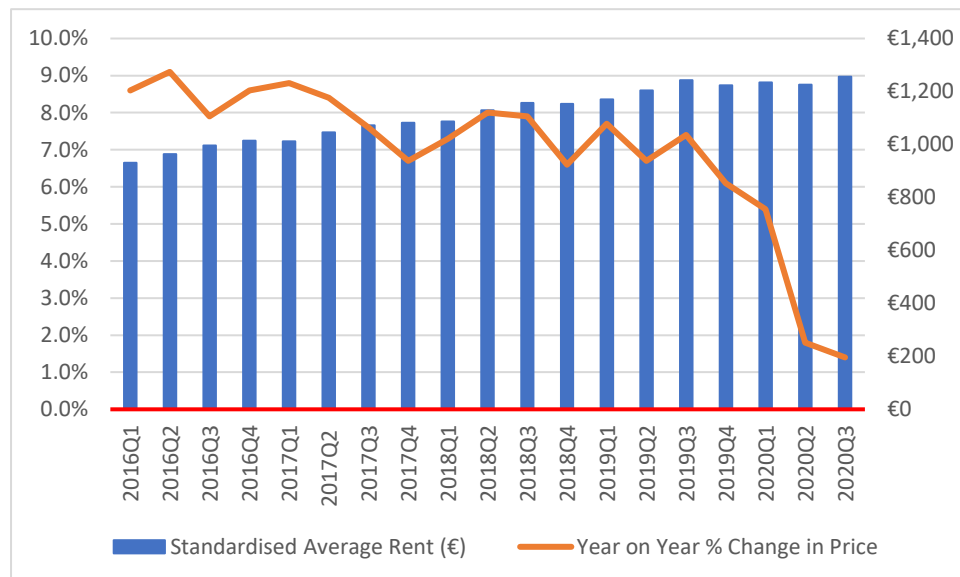
Figure 3: Median House Prices and Inflation – Dublin 2016-2020



Source: CSO

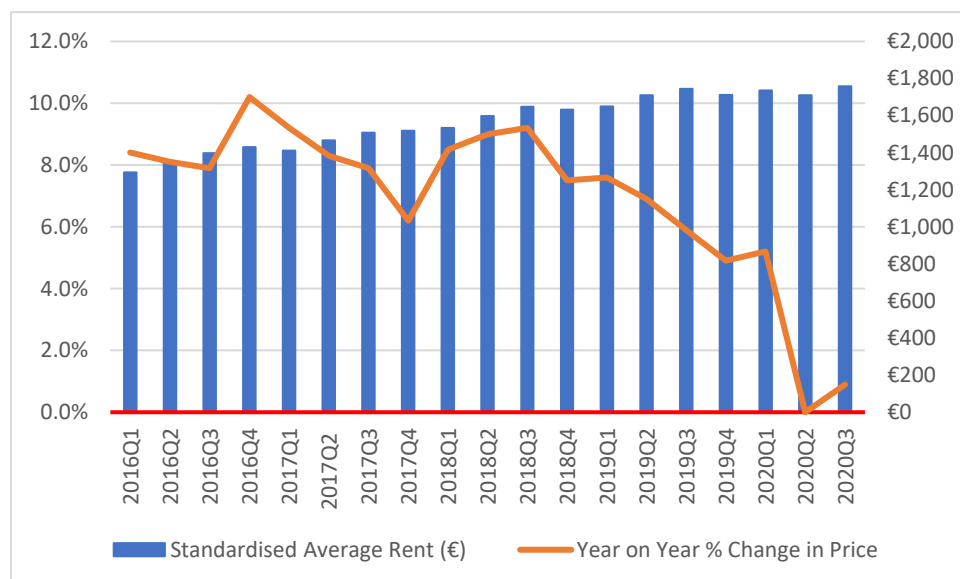


Figure 4: Standardised Average Rents and Inflation – Nationally 2016-2020



Source: RTB

Figure 5: Standardised Average Rents and Inflation – Dublin 2016-2020



Source: RTB

3.1.2. Affordability at a national level

A common metric for affordability is that less than a certain proportion of income is used to service housing costs, though there is no consensus on the appropriate threshold. The European Commission uses EU Statistics on Income and Living Conditions (SILC) data to compute the proportion of the population living in households where total housing costs

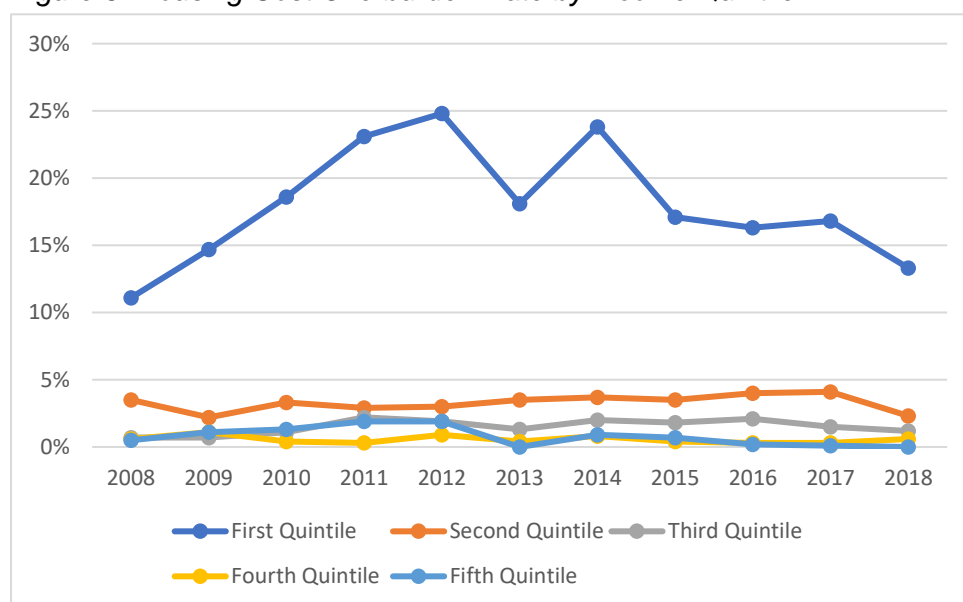


represents more than 40% of the total disposable household income. This is referred to as the housing cost overburden rate.

In 2018, the housing cost overburden rate in Ireland was 3.4%. This is compared to an EU28 figure of 10.3%²². However, as would be expected, those at the lower end of the income distribution spend a greater percentage of their income on accommodation.

In 2018, 0% of those in the fifth (top) income quintile in Ireland experienced housing cost overburden, compared to 13.3% of those in the first (lowest) income quintile. While the housing cost overburden rate has remained quite flat for the second to fifth quintiles since 2008, it has fallen significantly over the past number of years for those in the first, or lowest, quintile, down from a high of 24% in 2014 (see Figure 6). Many of those in the first, quintile are likely covered by social housing supports, and the falling affordability issues may reflect the expansion of the Housing Assistance Payment (HAP) Programme since 2014.

Figure 6: Housing Cost Overburden Rate by Income Quintile



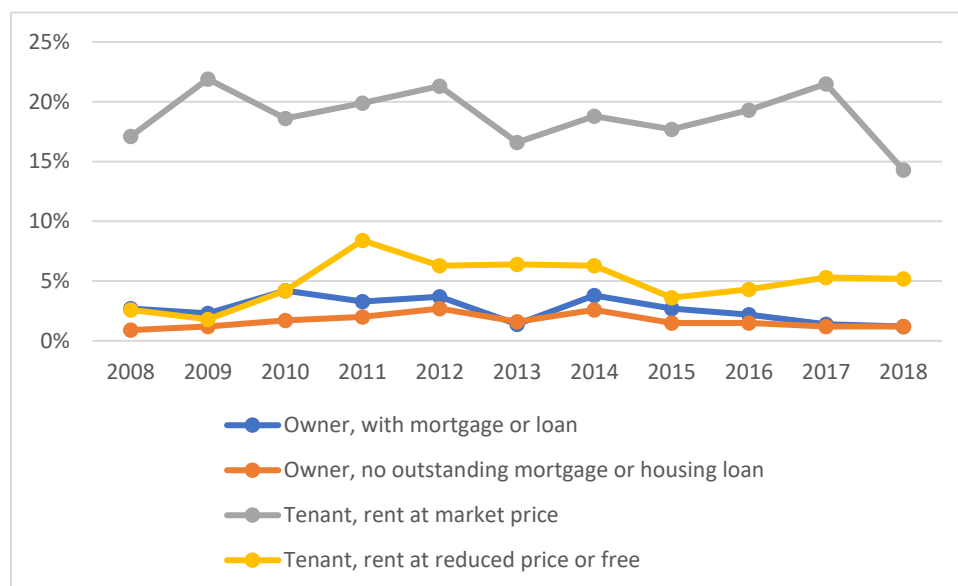
Source: EU-SILC, Dataset TESSI162

The housing cost burden rate also varies across different tenure types, as shown in Figure 7. Those renting in the private sector are most likely to be overburdened by housing cost, with 14% of such tenants spending more than 40% of their income on their accommodation in 2018, compared to 5% of those paying a reduced rental price, and 1% of those who own their properties. The housing cost overburden of owners with mortgages and owners without mortgages are both very similar, and very low. This suggests that mortgage repayments do not generally result in an expenditure on housing costs of more than 40% of income, which may be a function of the Central Bank's macroprudential rules.

²² EU SILC, 2020, Housing Cost Overburden, Data code TESSI162



Figure 7: Housing Cost Overburden Rate by Tenure Status



Source: EU-SILC, Dataset TESSI164

At 3.4%, the overall Irish housing cost overburden rate in 2018 was the lowest since 2009²³. The increase in affordability in recent years may be due to:

- **Rising incomes.** In Q2 2020, average weekly earnings were 18% higher than in Q3 2014. As Figure 7 shows, those with mortgages experience lower housing cost overburden rates than renters. Due to the ability to borrow 3.5 times each euro of income under macroprudential rules, salary growth increases the possibility of home ownership.
- **Falling Prices.** There has been a pronounced slowdown in House Price Index since mid-2018. The latest price point shows that average property prices nationally fell by 0.4% in the year to October 2020, with a 1.2% annual fall in prices in Dublin²⁴.
- **Expansion of social housing supports**
- **Falling interest rates.** Although Ireland still has the third-highest mortgage interest rates in the eurozone, since the late 1980s interest rates have been on a general downward trend, and fixed rates in Ireland are at an all-time low.
- **Rent Pressure Zones (RPZs)** These are designated areas where rents for new and existing tenancies cannot be increased by more than 4% per annum. As of October 2020, 50 local electoral areas and five local authorities have been designated as RPZs.

²³ EU SILC, 2020, Housing Cost Overburden, Data code TESSPM140

²⁴ CSO, 2020, Residential Property Price Index October 2020



Table 3: Average Characteristics of New Mortgage Lending

	FTB Dublin	Non-FTB Dublin	FTB outside Dublin	Non-FTB outside Dublin
Property Value	€364,121	€556,316	€250,379	€343,568
Loan Size	€294,221	€361,043	€204,355	€227,303
Loan to Value Ratio	80.8%	64.9%	81.6%	66.2%
Income	€89,109	€127,076	€69,254	€96,385
<i>Source: Central Bank, Household Credit Market Report 2020</i>				

3.1.3. Affordability at a local level

While it does provide useful insights, there are a number of challenges associated with the housing cost overburden metric used above.

Firstly, the housing overburden rate considers all households. However, the rapid increase in property prices in recent years, combined with strict macro-prudential rules, likely means that affordability challenges are particularly acute for those attempting to get onto the housing ladder by purchasing their first property²⁵. Data from the Central Bank shows that first time buyers generally have lower incomes than other buyers, as shown in

Table 3. The loan to value ratio is also higher for first time buyers compared to other buyers. As such, affordability issues are more prevalent for FTBs.

Secondly, this metric looks at the country as a whole. However, the concentration of employment and amenities in urban areas tends to result in the highest costs being in and around cities and major towns. This is evidenced from the heat maps below.

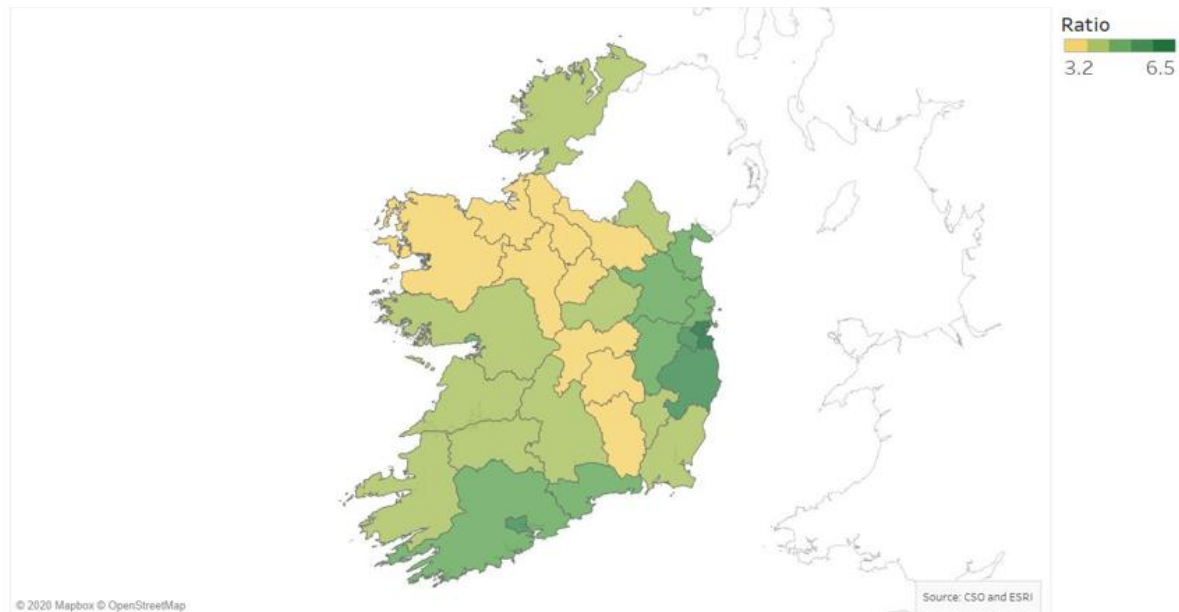
Figure 8²⁶ shows that properties are particularly expensive relative to incomes for first time buyers in Dublin and surrounding areas, as well as Cork and Galway cities; in Dublin the FTB median house price to median gross income ratio was 6.5. However, other parts of the country, especially the Midlands, West and Border areas, there are fewer affordability challenges.

²⁵ Noting, however, that FTBs wishing to purchase new homes do have access to the Help to Buy scheme, now enhanced to €30,000 or 10% of the purchase price of the property

²⁶ Created by DHPLG's Statistics and Data Analytics Unit, using CSO, RTB, and ESRI data.

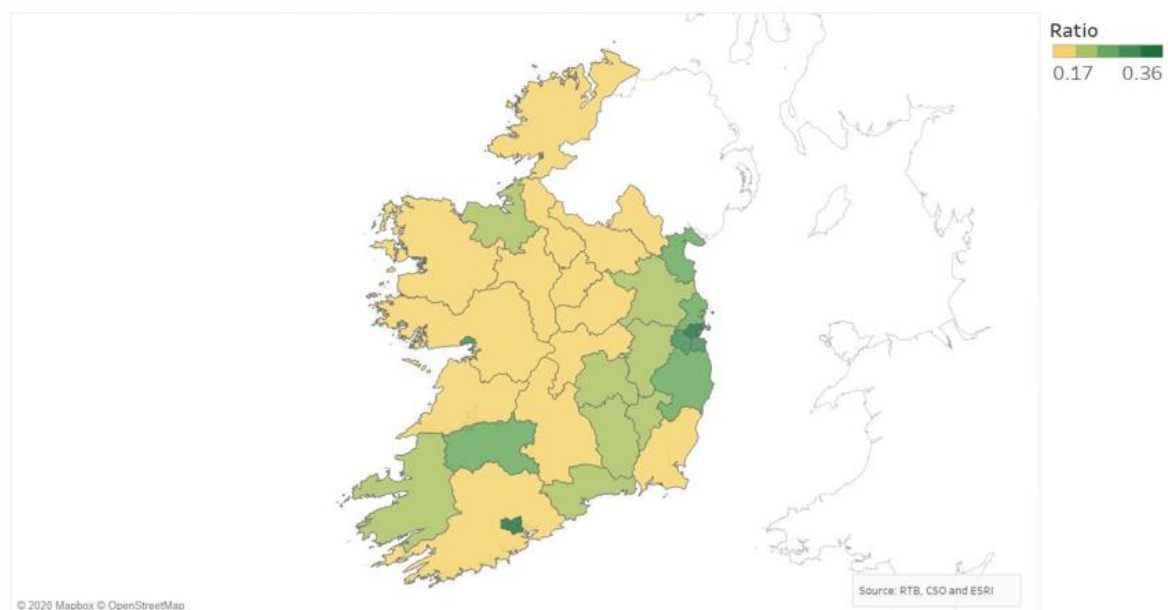


Figure 8: 2019 FTB House Price to Median Gross Income Ratio by Local Authority



The same pattern is even more pronounced in Figure 9²⁷, which shows the median annual rent to median gross income ratio.

Figure 9: 2019 Median Annual Rent to Median Gross Income Ratio by Local Authority



²⁷ Created by DHPLG's Statistics and Data Analytics Unit, using CSO, RTB, and ESRI data.

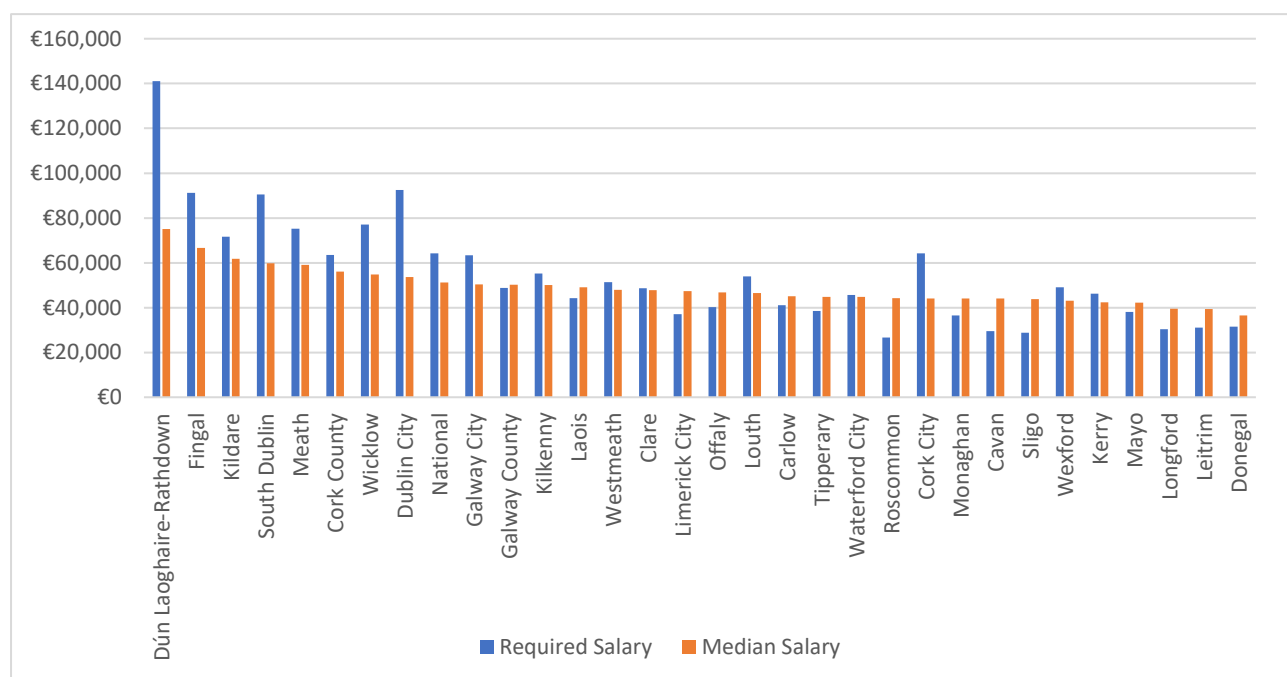


Figure 10 presents both the median gross household income per local authority area in Q1 2020, and the income required to purchase a home in each LA area under current macroprudential rules²⁸. In Dún Laoghaire-Rathdown, for example, the median household income is the highest in the country at €75,000, but the high property prices mean that the minimum gross household income required to obtain a mortgage for the median property in that area is €141,107. As such, the median household in that area cannot afford to buy the median property there.

By contrast, in Carlow, the median household income is €45,071 which exceeds the threshold of €41,143 necessary to secure a mortgage for a median property.

Of the 31 local authority areas for which data was available, median household incomes in 17 of these areas are lower than necessary to obtain a mortgage on the median property. As above, the most significant affordability pressures for first-time buyers are in Dublin, the surrounding Mid-East region,²⁹ the regional cities, and large urban centres.

Figure 10: Median Household Income vs Required Household Income for Median Property, Q1 2020



Sources: Calculated using
 CSO, 2020, Market-based Household Purchases of Residential Dwellings by Dwelling Status, Stamp Duty Event, RPPI Region, Type of Buyer, Month and Statistic, HPM03,
 CSO, 2020, EH03: Average Earnings, Hours Worked, Employment and Labour Costs by Economic Sector NACE Rev 2, Type of Employee, Quarter and Statistic
 CSO, 2016, Household Median Gross Income by County

²⁸ This analysis assumes a first-time buyer paying a 10% deposit and obtaining 3.5 times their gross income.

²⁹ As defined by the CSO, the Mid-East region comprises Kildare, Louth, Meath, and Wicklow.



3.1.4. Conclusion

While the pace of property price inflation has slowed, and in the sales market even reversed, a legacy of high inflation has resulted in high prices in both the purchase and rental markets. A range of metrics indicate that these high prices have led to affordability challenges. However, the extent of such challenges varies across a range of dimensions, including tenure type, income and, in particular, geography. Property prices vary much more than incomes across the country. As a result, affordability levels can be quite different between locations, with particular affordability challenges in Dublin, the surrounding Mid-East region, regional cities, and large urban centres. The analysis above found that in 17 of 31 local authority areas, local median household incomes were insufficient to purchase the median property in that area.

In comparison to demand side interventions such as the Help to Buy scheme, the economics underpinning the expansion of Part V are sound assuming that the land is appropriately costed by developers. In particular Part V:

- **Increases affordability directly** by reducing the cost of delivery by reducing land costs (and thus captures a greater proportion of the betterment value of the land for the public);
- **Eliminates market distortion**; besides the price of the land, the costs of development and associated commercial decisions for the developer should remain unchanged;
- **Is non-inflationary**; in particular, while demand side schemes can make certain properties more affordable to the target audience in the short term, the benefits of the scheme tend to be capitalised into prices. As such, demand side schemes tend to be inflationary for the market as a whole.



3.2. TOR 2: Impact of a change in Part V on housing supply

TOR 2: Examine (including conducting an econometric analysis either internally or with external support if necessary) the likely impact on housing supply if the Part V requirement was increased from the current 10% back to 20% (or above) and identify any measures that should be taken to protect housing supply.

3.2.1. The approach adopted by developers to land costing and Part V

When engaging with landowners, developers are aware that they will be obliged to provide a certain percentage of the land they are purchasing at existing use value to the local authority. Assuming developers are using residual appraisal, the Part V obligations should be fully accounted for in the price they are willing to pay for the land; the costs of development and associated commercial decisions should remain unchanged. As such, the impact of an increase in Part V requirements is on the landowner, who has benefitted from the uplift in land values following the granting of planning permission. The Part V contribution facilitates the benefits associated with the uplift in land values from the granting of planning permission to be shared with the wider community.

Developers' profit is not permitted as a cost when constructing Part V properties. Therefore, it has been argued that if the Part V requirement was increased to cover a large proportion of the development it could reduce a developer's incentive to take on the development risk. However, if a residual appraisal approach is used, the associated risk should be incorporated into the price paid for the land.

It is worth noting that submissions from industry bodies³⁰ as part of the 2014 Part V review conducted by The Housing Agency indicated that developers generally purchase sites as they become available and, given land scarcity, pay the asking price or above. The landowner achieves 100% of the planning gain from the site and the developer neglects to account for the Part V requirement until development is about to commence. In this scenario, the developer considers the net monetary value gained by the local authority as a cost and generally tries to recoup this cost through the sales price of the private homes in the development.

These practices have resulted in industry claims that Part V inflates the cost of housing provision and that increasing the Part V requirement will increase private house prices.

Up to 2008, it appears that the market could support this practice and adding the costs associated with Part V onto the sales price of private homes did not impact on the viability of sites. Recent increases in costs, and limits to the prices that the market will bear have altered the viability of this approach and development in many areas is now only marginally viable. In

³⁰ Property Industry Ireland, 2012, *Planning a Better Future* (page 72): <https://www.propertyindustry.ie/Sectors/PII/PII.nsf/vPages/Publications~planning-a-better-future-19-06-2012!OpenDocument>



addition, since the end of 2019, house price inflation has flattened, and prices actually fell on a year on year basis since July 2020. This suggests the market cannot currently absorb a Part V premium added to the sale price.

One of the actions for consideration set out in Section 2.4 of this document is to undertake a communications campaign to call out this practice and combat the prevailing narrative from the sector that Part V is a direct cost to private homes and that any increase would affect the viability of developments. It is important that the basic principle of where the savings should be borne is accepted and factored in at the appropriate point in the development process.

3.2.2. Need for transitional arrangements for any increase in Part V requirement

Another action set out for consideration in Section 2.4 is that any increase in the Part V requirement would be accompanied by a provision in legislation for land already purchased.

Valuations and land sales should currently recognise that up to 10% of the site may be purchased by the local authority at existing use value, as opposed to full development value. As described previously, the beneficiary of the uplift in land value resulting from the granting of planning permission is the mainly the landowner and the Part V requirement should be considered by developers when purchasing land. Regardless of whether this has been the case, or if developers have bought land with the intention of paying for the costs of Part V via higher property prices, any increase to a higher Part V percentage must be consistent with the approach that the reduced Gross Development Value has been factored in at the point of land purchase.

To apply the increased percentage to land already in the ownership of developers would potentially be of serious concern to developers and the wider housing construction sector. Land purchased factoring in Part V at 10% would see a reduced development value and this could impact on the ability to access development finance.

The Part V legislation, as commenced in 2000, made provision for existing landowners. Section 96(6)(a) of the Planning and Development Act 2000 states that in the case of land which:

- (i). had been purchased
- (ii). was the subject of a legally enforceable agreement to be purchased
- (iii). had been gifted
- (iv). had been purchased or agreed to be purchased, by a mortgagee

before 25 August 1999, the local authority would acquire the Part V land at the purchase price of the land plus any relevant interest, or if the land had been gifted, at the market value on an agreed date. All Part V land which changed hands after 25 August 1999 was purchased at existing use value on the date on which planning permission was granted.



It should be noted that in its decision in *re Article 26 and the Planning and Development Bill, 1999 [2000]*, the Supreme Court made continual reference to Section 96(6)(a). In deciding that Part V could not be regarded as “arbitrary, unfair or based on irrational considerations”, the court stated that it was reasonable to differentiate between persons who bought land after and before the Bill was published (25 August 1999), and to afford more generous treatment to the latter category. There are also references to cases where a plaintiff lost their case for compensation on property issues because they should have known about legislation or circumstances before they purchased the land. For these reasons, it may be legally problematic to increase Part V requirements on landowners who purchased land while the maximum Part V requirement was 10%. Legal advice on this matter may be helpful.

Given the provisions in Section 96(6)(a) of the Act and their significance in the Supreme Court decision, it is proposed that a provision be included in any new legislation to deal with any additional Part V requirement for land purchased between 2015 (when the Part V requirement decreased to a maximum of 10%) and a date to be determined, on or before the introduction of the new legislation.

3.2.3. Part V Transitional Arrangements – Potential Options

The need for transitional arrangements for any increased Part V requirement is clear. There are, however, several potential options for how these arrangements might be structured.

The transition provisions in the 2000 Act set a 20% Part V requirement with immediate effect but obliged the local authority to pay a different purchase price for the land depending on when the developer acquired it. A developer who purchased land before 25 August 1999 would be compensated for the cost incurred in acquiring the land. Land acquired after that date will be compensated at existing use value.

This approach did not recognise that the developer would lose out on any expected profits for the sale of housing on this portion of the land. However, there is a potential concern in that that certain developments which are marginally viable at current market house prices may become unviable where a further 10% of the housing must be sold at construction cost with only builder’s profit. This may well be a function of having paid an excessive price for the land or it could equally arise where Part V was properly accounted for.

One consideration for this scenario is to potentially allow a viability analysis argument to keeping Part V at 10% for developments on land purchased between 2015 and the date the increased requirement should have been known. Viability assessments have been a feature of Section 106 negotiations between local authorities and developers in the UK housing market since 2012. The most recent UK National Planning Policy Framework³¹ moved away from conducting viability assessments on every site. One of the main issues with viability assessments in the UK has been an imbalance of resources and access to technical

³¹ Gov.UK, 2019, *Guidance on Viability* <https://www.gov.uk/guidance/viability>



expertise between developers conducting viability assessments and planners evaluating them³². For this reason, viability assessments may only add further complexity to the process causing further delays in the development cycle.

In that context we have considered a second option for these transitional arrangements which would maintain a 10% Part V requirement for land transacted before the relevant date. The 20% Part V requirement would only apply to sites transacted after the relevant date.

We have also considered some variations on the two options which could be considered if it is intended that Part V would be used to attempt to accelerate the delivery of housing.

These options are set out below along with Table 4 showing a comparison of relevant considerations for each option.

³² Crosby, N. & Wyatt, P. 2019. *What is a 'competitive return' to a landowner? Parkhurst Road and the new UK planning policy environment*, Journal of Property Research, 36:4, 367-3: <https://www.tandfonline.com/doi/abs/10.1080/09599916.2019.1690028?journalCode=rjpr20>



(i). Mirror the original provisions in the 2000 Act

20% (or up to 20%) Part V requirement on all sites. Where a developer purchased land before the relevant date³³, the local authority purchases 10% of the land at existing use value (EUV) and 10% at the price the developer paid for it. If the developer purchased land after this date, the local authority purchases 20% of the site at existing use value. *Existing landowner receives EUV for 10% of site and purchase value for 10% of site. Local authority buys up to 20% of the housing for social and affordable.*

(ii). Exemption to the increased Part V requirement for existing land

Where a developer purchased land before a certain date, a 10% Part V requirement applies to that site. For land purchased after a certain date, where no Part V agreement has been concluded, a 20% Part V requirement applies to that site and the local authority buys 20% of the site at existing use value. *Existing landowner receives EUV for 10% of site. Local authority buys up to 10% of the housing for social only. The increased Part V for affordable housing is only available on land purchased after the relevant date.*

(iii). 5-year exemption followed by a mirror of the original provisions in the 2000 Act

As per Option (ii), where a developer purchased land before a certain date, a 10% Part V requirement applies to that site. For land purchased after a certain date, a 20% Part V requirement applies to that site and the local authority purchases 20% of the site at existing use value.

However, this would be a “sunset clause” provision which would expire after 5 years. On the expiry of the provision, there would be a 20% Part V requirement on all sites. Where a developer purchased land before a certain date, the local authority purchases 10% of the site at existing use value and 10% at the price the developer paid for it. For land purchased after this date, the local authority buys 20% of the site at existing use value. *Existing landowner receives EUV for 10% of site. The local authority gets up to 10% of housing for social only. After 5 years, reverts to Option (i). A 20% Part V requirement, with the developer paid EUV for 10% of the site and purchase value for 10% of the site.*

(iv). Option (i) or Option (ii) with sunset clause

The arrangements in either Option (i) Option (ii) or would apply for 5 years. After which there would be a 20% Part V requirement on all applicable sites and the local authority would purchase 20% sites at existing use value.

Specific provisions for existing land for 5 years, after which the local authority can purchase 20% of all applicable sites at EUV

³³ Considerations for selecting the ‘relevant date’ are set out in Section 3.2.4.

Table 4: Comparison of relevant considerations for options for Part V transition arrangements

	Option (i) Mirror 2000 Act Provisions	Option (ii) Exemption to increased Part V requirement	Option (iii) 5-year exemption followed by 2000 Act provisions	Option (iv) (i) or (ii) with a 5-year sunset clause
Acknowledges Part V expectations at time of land purchase?	Developers receive the purchase price for the additional 10% of land but impacts on the developers view of viability	Yes	Yes for 5-years and then only a marginal impact	Yes, if Option (ii) with sunset clause but only for 5 years. In either case, after 5 years the local authority buys 20% of the site at EUV
Encourages the commencement of construction?	Possible risk that a marginal impact on developer viability may delay construction	No effect	May encourage construction before the 5-year exemption expires	More likely than option (iii) to encourage construction before the 5-year exemption expires. After 5 years, 20% of land is sold at existing use value
Impact on incentive to develop	Rigorous implementation of vacant site levy should provide incentive to develop	Rigorous implementation of vacant site levy should provide incentive to develop	Likely to incentivise, in addition to the vacant site levy as 20% Part V applies after 5-years	More likely to incentivise, in addition to the vacant site levy as 20% of land sold at EUV after 5-years
Effect on the supply of Part V affordable housing?	Affordable housing available once development plans are updated , although no planning gain discount on existing sites	Affordable housing only available on land purchased after the relevant date	Affordable housing only on newly purchased land for 5-years, then on all sites but although no planning gain discount on existing sites	After 5-years, if development plans are updated, affordable housing available on all sites with full Part V discount
Open to Supreme Court Challenge?	No, as mirroring original legislation	Possibly but unlikely that a case would be taken as the alternative is option (i)	Possibly but unlikely that a case would be taken as the alternative is option (i)	Possibly. The 2000 Act as tested had no sunset clause on the provisions for existing land.
Legislative impact	Similar provision to the 2000 Act	Additional provision in Section 94(4)(c)	More substantial provisions in Section 94(4)(c)	More substantial provisions requirement for sunset clauses
Interaction with local authority housing strategies?	Straightforward interaction with housing strategies as per 2000 Act	Additional provisions required for land to which the 10% or 20% applies	Additional provisions initially but then as per the 2000 Act.	Additional provisions may be required



3.2.4. Lead-in period and market signalling of any increased Part V requirement

The Programme for Government, in June 2020 committed to:

“Explore expanding Part V to encompass affordable purchase and cost rental units.”

Since the publication of this statement, there has been increasing uncertainty among developers, investors, and financiers about a potential increase in the Part V requirement.

If this uncertainty were to continue indefinitely, it could impact on decisions made by these parties about whether to commence development and the rates charged for development finance.

This uncertainty will continue until the policy position is made clear, reassuring the sector that if the Part V requirement is increased to 20%, there will be transitional arrangements included in the legislation for land already purchased. This could be signalled in advance of the publication of the Bill.

One key element of the policy is confirming the relevant date for the transitional arrangements. Any land purchased before that date would be provided for in the transitional arrangements, and any land purchased after that date would be subject to the increased Part V requirements.

3.2.5. Potential impact Part V on the supply of development land

A potential area on which an increase in Part V obligations could impact the supply of new homes would be if landowners chose not to sell the land for development. Once Part V obligations remain below 100%, landowners will benefit from the uplift in land value following planning permission. However, the proportion of the betterment value they gain and thus their incentive to sell is a function of the Part V obligation (this is assuming that land prices are determined based on the residual appraisal). As such, as Part V obligations increase, the incentive to sell will fall. This is likely to be a particular challenge if there is a perception that the policy raising the Part V obligations is temporary and may be reduced again. In this case, landowners may choose not to sell, but rather to continue to hold the land (and even to pay vacant site levies) with the expectation that prices they may receive will increase in the future.³⁴

³⁴ The Planning and Development (Amendment) Act 2018 increased the Vacant Sites Levy rate from 3% of the market value of a vacant site for 2018, to 7% for 2019. However, local authorities have faced multiple difficulties in effectively administering the levy, with particular challenges around defining and identifying a vacant site, determining ownership and liability and resource limitations. (PBO Publication 29, 2020). As of end-2019, of 31 local authorities, 17 had active registers (i.e. listed sites) with assigned market valuations; a further six had active registers but were missing market valuations; while eight had



However, this seems an unlikely scenario given that landowners would be aware of the cyclical nature of the property market and are likely to only consider selling when prices are high or are rising. Holding land for the possibility that Part V obligations might fall would also risk land prices falling.

If a significant amount of land is already in the hands of private developers, no land transaction is required in order for development to take place. If no transaction takes place, this land would be included in the proposed provisions for existing land and any increased Part V requirement would not apply. In the absence of data on the ownership of land, the quantum of development land already owned by developers is difficult to determine. Further work could be undertaken to discover this figure and therefore calculate the impact of an increased Part V requirement on the supply of development land.

3.2.6. Econometric analysis

One way to evaluate the impact of Part V on the supply of new homes is through an econometric model which, controlling for the key drivers of construction activity – sale prices less development costs – seeks to identify a statistically different pattern before and after the introduction of Part V. Taking into account data limitations, particularly in relation to land prices, and changes in housing typologies and standards this approach is currently not considered fruitful.

no active register of vacant sites. A lack of housing need has been cited as one explanation for LAs not having active registers, however, the criteria for determining if there is a housing need in an area is unclear.



3.3. TOR 3: Sale and rental prices of Part V homes as affordable housing

TOR 3: Carry out an analysis to estimate the average saving to the State on a Part V unit and what are the likely range of sale and rental prices of those units as affordable housing.

3.3.1. Potential sale prices of Part V homes

The Housing Agency analysed data provided by the DHLGH on Part V properties purchased by local authorities under the Social Housing Investment Programme (SHIP). Whilst the data provided covered the period 2016 – 2019, The Housing Agency focused on the 2019 data as this was the most up to date and comprised over 50% of the properties listed delivered in the period. Part V properties purchased in 2016 and 2017 were likely the result of historic Part V agreements so the prices paid may have been a factor of when the agreement was made.

Additional data from DHLGH on Part V properties approved for purchase by Approved Housing Bodies (AHBs) using funding available under the Payment and Availability (P&A) in conjunction with a Capital Advance Leasing Facility (CALF) loan was also analysed. However, this data was only available in a format suitable for analysis for Part V properties approved for purchase by AHBs since July 2019.

It is important to note that Part V negotiations are conducted between local authorities and developers and the purchase prices of all Part V properties are agreed by these two parties. The Act allows local authorities to nominate AHBs to complete the purchase of the relevant properties that form part of the agreement. For this reason, the analysis below does not differentiate between Part V properties purchased by local authorities under SHIP or approved for purchase by AHBs using P&A and CALF.

Of the 1,383³⁵ available records of properties purchased under Part V agreements in 2019 1,282 were analysed, excluding properties which were purchased off-site³⁶. As shown in Figure 11, the median purchase price for Part V properties was €239,145 nationally, and €282,274 for Dublin, compared to a national median market sale price of €332,501, and €390,376 for Dublin. The average was slightly higher, with an average price of €246,544 nationally and €273,323 for Dublin, with individual property prices ranging from €108,750 to €477,174 nationally.

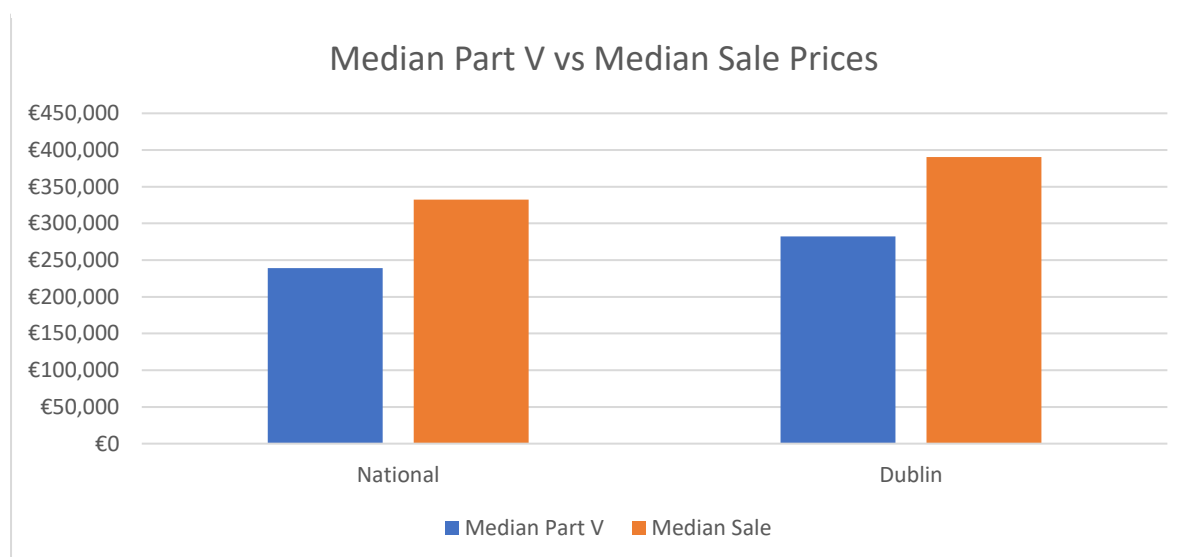
³⁵ Total Part V delivery for 2019 was reported as 1,326. However, data from the AHB subset includes properties for which funding was approved, but delivery was beyond 2019, hence the higher number of properties included for analysis.

³⁶ The data contained 101 older properties which had been purchased by local authorities under Part V in lieu of new properties in developments. These were often purchased at very low cost, most likely in place of a larger number of properties onsite. For this reason, they were excluded from the analysis.



The extent to which the range of prices identified above can be considered affordable will depend on the target income groups set by the overarching affordable policy.

Figure 11: Median Part V vs Median Sale Prices



Median prices differed widely between local authority areas, Carlow County Council paid an average of €154,256 per property, while Dublin City Council paid an average of €329,778 per property. Five local authorities had a median purchase price below €200,000, while nine local authorities had a median purchase price above €250,000. The range of prices varied between local authorities, for example, Fingal County Council paid between €163,360 and €407,093 per property, while Waterford City Council paid between €169,348 and €224,043 per property.

Fifty eight percent of properties were purchased for below €250,000, including 19% of properties which were purchased for below €200,000. Thirteen properties were acquired for prices above €400,000, which includes apartments located in the Dublin City Council administrative area, houses in the South Dublin County Council administrative area, and houses in the Fingal County Council administrative area.

On average apartments acquired under Part V agreements were purchased at a higher price than houses. The average cost of a house acquired under Part V was €236,535.17, while the average apartment cost €258,416.77 to acquire. Dublin acquisition prices play a key role in explaining why apartments cost more on average than houses. For example, the most expensive apartments acquired under Part V in both Galway and Cork cost close to the national average. In Dublin, however, ten apartments were acquired for more than €400,000 each. It should therefore be kept in mind that these properties alone have a significant impact the average apartment acquisition price.



The majority of properties purchased by local authorities were three-bed houses, with 495 three-bed houses purchased directly by local authorities. A total of 456 apartments were acquired, with 103 one-bed apartments, 219 two-bed apartments and 34 three-bed apartments. A small number of 4-bedroom properties and duplex properties were also acquired.

3.3.2. Calculating the market value of Part V properties

In order to calculate the average saving to the State on Part V properties, it was necessary to obtain the market value of the properties and compare this with the actual price agreed by local authorities.

Two methods were used in this review to obtain the market value of Part V properties. The first was to identify developments where AHBs purchased properties under a Part V agreement from the developer, as well as additional properties on the open market. From the available data, it was possible to distinguish which properties had been purchased as Part V properties. The remainder of the properties in such developments were purchased at prices agreed between the AHB and the developer. For the purposes of this review, these purchase prices were assumed to be at or close to market value. In the main, it was possible to identify comparable market and Part V properties within these developments which allowed the saving to the state to be calculated.

The second method used was to inspect the Property Price Register for private sales in developments for which Part V data was available. This approach presented greater difficulties as the Property Price Register does not provide information on the size or type of properties sold. In order to ensure a like for like comparison, it was necessary to source site plans of each development or to examine planning applications to obtain the addresses of properties which were comparable in size to the Part V properties. For a multitude of reasons, this approach was not always successful. In several cases, the Part V phase of the development was built in advance of the private phase and therefore no private properties had been sold on the market. In other cases, the Part V phase was built considerably later than the private phase and it was concluded that the purchase prices of the private homes were not representative of current market values.

A particular difficulty arose in determining market values for Part V apartments. Many apartment developments in urban centres are 'build to rent' type developments and as such, are sold in bulk to investors. This precluded the determination of market value for individual apartments, as these purchases are entered in the property price register as a single transaction. In several developments, the Part V element was comprised of apartments and the private element was solely comprised of houses which meant that no direct comparisons were available.



3.3.3. Average saving to the State on Part V properties

Table 5 shows the average saving on market value in those Local Authorities where sufficient data on transactions of at least 10 properties was available. The saving on a Part V property over an open market property varies widely from development to development, and in a small number of cases Part V properties were acquired at a higher price than comparable properties on the open market. There are several possible reasons for this including the purchase of custom-built properties for households with specific needs or where historic Part V agreements are in place. Scenarios which may result in the purchase of above market value housing through Part V are discussed in detail in Section 3.3.5.

Table 5: Discount achieved on Part V properties per Local Authority

Local Authority	Average Saving on Market Value	Number of Properties in Sample
Cork County	30%	19
Fingal	18%	18
Kildare	8%	48
Limerick	3%	14
Meath	19%	50
South Dublin	12%	20
Waterford	0%	11
Wexford	3%	23
National Average/ National total of properties in sample	15%	245

While open market acquisition prices for apartments were not readily available for comparison with local authority purchased Part V properties, this data is available for AHB developments which consist of a mix of Part V and open market properties. From a sample of these projects, there is again a wide range in the discount achieved, from a low of 3% to as much as 39% of a discount over open market properties in the same development. The highest discount was achieved in Dún Laoghaire-Rathdown County Council, where apartments were acquired at €185,000 less than comparable properties on the open market.

A number of properties were acquired at a price above that of the comparable open market property. These include several different developments of houses in the greater Dublin area, houses in single developments in Monaghan and Waterford City, and a development of apartments acquired by an AHB in Limerick City. These properties were acquired for as much as 13% over market value. Some specific reasons why Part V properties may be purchased for more than the market value are set out in Section 3.3.5.



In general, it should be noted that where a development delivers housing that is considered unsuitable for social housing support because of the cost or other aspect of the housing or site location, the local authority can agree for the developer to satisfy the Part V condition using one of the other options in the Act. This may be by way of acquiring houses off-site with the financial arrangement achieving the equivalent net monetary value.

In examining the data, it is important to be cognisant of the method by which Part V purchase prices are calculated. Where a local authority opts to purchase properties from a developer, the formula for calculating the purchase price of a property is:

Land (at EUV) + construction costs + a share of infrastructure and site costs + builder's profit.

Therefore, the purchase price of a Part V property does not directly relate to the market value. There is no set discount from market value and the Part V cost will be driven by both the types of properties being purchased and the existing use value of the land. Existing use value can vary by location but also by development type. A development on a greenfield site will have a lower EUV than a development on a brownfield site in an urban area. This can impact significantly on the cost of Part V properties. In addition, the local authority is not obliged to acquire exactly 10% of the number of properties in a development when choosing to purchase properties, a local authority may choose to acquire less properties for a higher discount on construction costs from the developer.

3.3.4. Potential rental prices of Part V properties

Cost rental is a new type of tenure in the Irish housing landscape and this review considers the opportunities and challenges of utilising Part V acquired properties for cost rental purposes.

Cost rental is rental housing where the rents paid by tenants are set at a level necessary to cover only the actual costs incurred to operate the properties and pay down whatever debt is associated with the properties. There is not necessarily a linear relationship between the capital cost of a property and the market rent that it could achieve if let on the open market. However, there is a direct relationship between a cost rent and the capital cost of a property. A reduction in capital cost, reduces the loan financing requirement which reduces the cost of repaying the loan, thereby facilitating a lower rental income requirement.

Therefore, if a reduction in the capital cost of a property can be achieved through Part V, this should, result in a reduction in the initial rents paid by tenants. There are many other factors to consider for Part V properties including how to determine which properties are suitable for cost rental, who will manage the properties, calculating the operational costs and the type of loan funding that will be available. These factors are considered further in Section 3.6.

For the purposes of analysis of the extent to which Part V can facilitate the delivery of cost rental housing, it was possible to use the data related to AHB funding approvals which had directly comparable property types acquired or approved for acquisition at close to market



values. This analysis also assumes that the cost rental properties will be acquired and operated by AHBs.

The data provided to the DHLGH by AHBs as part of a P&A and CALF funding application includes market rents for each of the properties. There are a number of developments within this data set where there are directly comparable Part V and market housing properties and a sample of seven such developments were selected. The general location, property types and acquisition costs are set out in Table 6 below.

Table 6: Sample Developments for Cost Rental Analysis

Development Location	Type	Market Price	Part V Price	Part V Discount to Market %
A. Cork	1-bed apt.	€205,395	€192,145	6.5%
B. Dublin	1-bed apt.	€325,000	€184,496	43.2%
B. Dublin	2-bed apt.	€396,500	€287,782	27.4%
C. Dublin	1-bed apt.	€271,827	€225,285	17.1%
C. Dublin	2-bed apt.	€364,000	€350,661	3.7%
C. Dublin	2-bed apt.	€450,000	€435,032	3.3%
D. Dublin	1-bed apt.	€345,472	€293,097	15.2%
D. Dublin	2-bed apt.	€436,372	€356,211	18.4%
E. Kildare	3-bed House	€299,000	€267,000	10.7%
F. Laois	4-bed House	€266,000	€244,035	8.3%

The Housing Agency has access to operational cost data from a number of AHBs and information on the funding available to AHBs which it has used to construct a model to estimate the rental income that an AHB would need to charge to ensure that it can manage the properties on the basis of the income meeting its expected costs over a 40-60 year period. The model was created to support the development of the cost-rental policy objective that was supported in Budget 2021³⁷ by the provision of €35m in capital funding to be made available to AHBs by way of an equity loan. For the purposes of this analysis, the proposed equity loan was not considered since the objective is to identify extent to which the Part V discount on its own can reduce the cost rent.

³⁷ Minister O'Brien announces €3.1 billion housing budget <https://www.gov.ie/en/press-release/96dba-minister-obrien-announces-31-billion-housing-budget/>



One of the considerations is the extent to which the current market rent represents a cost rent for the market value of the sample properties. Table 7 below sets out the results from the modelling of the data.

The assumptions used in the modelling are as follows:

- Properties are acquired using 100% debt financing, borrowed from the Housing Finance Agency by an AHB.
- The loan term is 30 years and repayments are on an annuity basis at a fixed interest rate of 2.75%³⁸ per annum.
- The operational costs are typical of costs used by AHBs for applications for P&A and CALF funding.
- Rental inflation of 1.6% per annum is applied to the rental income and 2% is applied to the operational costs over the term.
- An additional 1.5% of the capital cost is included in the funding requirement to cover the legal, inspection and valuation costs for the acquisition of the properties.
- The cost rent is calculated as the income required to access the necessary loan funding³⁹.

The Estimated Actual Cost Rent at Market Purchase Price was determined from the model and represents the rent that an AHB would need to charge if it purchased the properties at market price. The cost rent exceeds the market rent in all developments but is a more relevant figure to use when determining the level of savings that can be achieved as a result of the Part V discounted price.

³⁸ This is the current fixed interest rate charged by the Housing Finance Agency (HFA) for a loan term of 30 years to AHBs

³⁹ Lenders will always require the income to exceed the projected operational costs + loan repayment costs when determined the amount they are willing to lend so cost rent models will be required to show a surplus income to access the necessary loan funding.



Table 7: Cost Rent Estimate for Sample Properties

Development	Market Rent	Estimated Actual Cost Rent at Market Purchase Price	Cost Rent at Part V Purchase Price	Cost Rent as % of Market Rent	Cost Rent as % of Estimated Actual Cost Rent
A: 1-bed apt.	€1,200	€1,279	€1,217	101.4%	95.1%
B: 1-bed apt.	€1,400	€1,844	€1,181	84.3%	64.1%
B: 2-bed apt.	€1,775	€2,181	€1,668	94.0%	76.5%
C: 1-bed apt.	€1,350	€1,593	€1,373	101.7%	86.2%
C: 2-bed apt.	€1,750	€2,028	€1,965	112.3%	96.9%
C: 3-bed apt.	€2,000	€2,434	€2,363	118.2%	97.1%
D: 1-bed apt.	€1,500	€1,941	€1,693	112.9%	87.2%
D: 2-bed apt.	€1,800	€2,370	€1,991	110.6%	84.0%
E: 3-bed House	€1,500	€1,721	€1,570	104.7%	91.2%
F: 4-bed House	€1,200	€1,565	€1,462	121.8%	93.4%

The expectation for cost rental is that it will deliver properties for rent at rates significantly below market rents and the level that these rents are set at may be considered as affordable rents where the discount is sufficient to enable access to households on lower incomes⁴⁰. It is clear from Table 7 that the Cost Rent at Part V Purchase Price exceeds the market rent for all but development B properties which suggests that the **Part V savings on their own will not be sufficient to deliver cost rental properties.**

As discussed elsewhere in this report, it may be possible to reduce the number of Part V properties acquired to achieve a sufficiently low acquisition cost to achieve lower costs rents. This policy would, however, only serve to reduce the number of properties being delivered through Part V thus minimising the more balanced developments envisaged.

The cost rent saving against the Estimated Actual Cost Rent at Market Purchase Price ranges from 2.9% to 35.9% and the variation directly correlates to the Part V acquisition cost saving over the market price. It is worth noting that the cost rent saving is less than the percentage capital cost savings which indicates that, for example, a 10% discount on market value does not deliver an equivalent 10% saving on cost rent. The reason for this appears to relate to the other variables in the model used. For example, a reduction in the loan interest rate

⁴⁰ The level at which cost rent become affordable rents has not been considered as part of this paper and is part of the broader affordable measures currently being considered by the Department.



assumption of 0.25% reduces the Cost Rent at Part V purchase price for the 2-bed apartment in Development D to 18% which is almost equivalent to Part V capital cost saving to market price. This highlights one critical aspect of delivering cost rental properties at scale and that is the availability of long-term low-cost financing. This aspect is discussed further in section 3.6

3.3.5. Caveats on Part V data

It should be noted that actual Part V purchase prices come with some caveats and may represent figures that are higher or lower than the price achieved by purchasing the land at existing use value and adding construction costs.

1. Above market price figures

Very occasionally, the data shows that local authorities paid the market price or above the market price for Part V properties. This can be for several reasons.

- In some instances, developers provide custom-built properties for the local authority for households with special needs. The construction costs of these properties can be significantly higher than the construction costs for the standard private properties in the development.
- In a development of 21 properties, the 10% Part V requirement equates to 2.1 properties. The local authority may decide to take three properties. In this case the first two properties will achieve the full Part V discount, but the third property will be close to or at market price.
- And finally, a local authority may negotiate a Part V agreement based on construction costs which is below the market value. Subsequently, the developer may agree to sell the entire development to an AHB as a turnkey. By purchasing the entire development, the AHB may achieve a better discount per property than available through Part V, however the Part V agreement still stands and the AHB must purchase the Part V properties at the same or a slightly higher cost than the other properties in the development.

2. Receiver sales and unfinished estates

Where a developer has purchased an unfinished estate through a receiver sale, this can result in significant distortions in the market price of the properties. Section 96 3(d) specifies the price of Part V properties as the site cost of the properties (at existing use value) plus construction costs, builders profit and a share of any common site development works. Where a developer has purchased an unfinished estate, many of the common works may be underway or completed and work may have begun on some properties. This reduces the costs to the developer considerably. The local authority and the developer may rely on the formula in the Act to calculate Part V



costs, regardless of whether these costs are borne by the developer. This may explain how a developer can sell turnkey properties to AHBs at a lower price than the Part V properties in the same development and still make a profit.

3. Below construction cost figures

The Part V data shows a number of properties purchased for prices below the cost of construction, as low as €50,000 in some instances. This is generally the result of one of two scenarios.

- a. Firstly, a local authority may opt to take a lower number of properties in the development than it is entitled to and use the remaining net monetary value as a discount off the construction costs. For example, if a local authority was entitled to purchase 10 properties, it could choose to purchase two properties and use the net monetary value from the other eight to achieve a discount off the construction costs. This also applies to off-site properties. In many areas second-hand properties are significantly cheaper than new-build properties and applying the Part V discount off-site results in low purchase prices being achieved.
- b. The second scenario relates to historic Part V agreements where the Part V requirement was still 20%. If the local authority is entitled to 20% of the planning gain and uses this to purchase 10% of the properties in the development, it can achieve significant discounts.

3.3.6. Financial supports to achieve affordability

In conclusion, the data shows that Part V will not always deliver sufficiently discounted properties in all cases to make it viable to market these as affordable housing, but there is potential for the delivery of affordable purchase housing. The delivery of cost rental is a more complex issue for many sites, but it appears that the Part V discount on its own would not be sufficient.

As discussed previously, if the equivalent net monetary value achieved under Part V is not sufficient to achieve what the local authority considers an affordable purchase price, the local authority can opt to take fewer properties in the development for a greater discount. This would negate the need for further financial supports for affordable purchase properties. However, it has the effect of reducing the number of properties acquired at a discount.

It is likely that cost rental properties provided under Part V would require further financial supports in order to achieve affordable rents. This is set out in more detail in Section 3.6.

In developments on certain brownfield sites where the land has a high existing use value, it is possible that the equivalent net monetary value achieved under Part V may not be sufficient



to achieve an affordable purchase price for any of the properties. In this case the local authority could be given the option to use the equivalent net monetary value from the site towards affordable purchase properties elsewhere, as is currently an option with the provision of social housing support. It should be noted that “off-site” properties provided by developers for social housing support are often second-hand properties requiring some refurbishment and may not be suitable as affordable purchase properties.



3.4. TOR 4: Optimum structure for the sale of affordable homes under Part V

TOR 4: Identify the optimum structure (whether direct sale without further subsidy, sale under the Affordable Purchase Scheme or under some other structure) that should apply to the sale of affordable units under Part V to limit any risk/financial exposure to local authorities.

3.4.1. Lessons from previous sales of Part V affordable purchase homes

One consequence of the financial crisis was that local authorities were left with a stock of unsold affordable properties. By 2011 there were 2,500 unsold affordable properties, three quarters of which were located in Dublin and Cork. To date, unsold affordable properties have resulted in over €330million of debt on local authority balance sheets. Many of these affordable properties remain unsold and in debt but are in use for social housing support.

As outlined in the DKM review of Part V⁴¹ in 2012, local authorities encountered losses on affordable properties they purchased from 2006 onwards of which 2,500 remained unsold in 2012. This clearly demonstrates the risks associated with local authorities purchasing affordable housing before selling them on to eligible households.

In addition, a common criticism from that time was that local authorities lacked the skills necessary to sell properties to buyers (DKM report). Private developers typically contract out sales and marketing to professional estate agents, but many local authorities undertook the sales themselves. Everything from preparing brochures to advertising and viewings was undertaken by their own staff. The Affordable Homes Partnership assisted with this, providing shared services for local authorities and a website advertising affordable housing for sale.

Some local authorities took a different approach and implemented direct sales agreements with developers. These agreements outlined the sales process between the local authority's nominated purchaser and the developer. The local authority assessed the eligibility of potential purchasers, nominated a purchaser for the property and agreed the price with the developer.

The cost of holding the affordable properties before they were sold therefore remained with the developer. However, the local authority appears to have retained a large part of the risk in that if it failed to nominate a purchaser to the property, or if the purchaser failed to complete the sale, the local authority committed to purchasing the property itself.

⁴¹ DKM and Brady Shipman Martin, 2012, Review of Part V of the Planning and Development Act, 2000. Prepared for The Housing Agency.



3.4.2. Considerations towards achieving an optimum sales structure

Taking both efficiencies and risk into account, the optimum sales structure appears to be directly between the developer and the purchaser.

A potential mechanism for selling Part V affordable purchase properties is the affordable dwelling purchase arrangement outlined in the Housing (Miscellaneous Provisions) Act 2009. Section 80 of the 2009 Act provides for the local authority entering into a direct sales agreement with a developer.

The sales price and identification of the properties to be sold under the scheme would be negotiated and specified in the Part V agreement. The arrangements for the completion of sales and assessing potential buyers for eligibility could be specified in the direct sales agreement.

The primary distinction between Part V affordable purchase properties and affordable purchase properties on local authority land is that it is imperative that the local authority nominates a buyer as quickly as possible.

Developers face a high finance cost in holding completed but unsold properties and, following nomination by the local authority, it can take a buyer some time to arrange their mortgage. Buyers may exit the process if they are unable to secure a mortgage and the local authority will have to a new buyer. Significant delays in sales could have serious implications for developers. Therefore, buyers should be nominated for the affordable purchase properties as early in the process as possible to allow affordable sales to complete concurrently with private sales.



3.5. TOR 5: Affordability challenges across the country

TOR 5: Consider whether an increased percentage in Part V for affordable homes should apply nationally and to units at all price points or should it, for example, be limited to particular price points or areas with identifiable affordability issues.

3.5.1. Differing affordability challenges across Ireland

Current Central Bank macroprudential rules limit first-time buyers (FTB) to a mortgage of 90% of the property's value, and 3.5 times gross household income. Table 8 below shows the median gross household income necessary to be able to buy the median home (either new or second hand) in every local authority area in Ireland. The average household income required in 2019 was €49,439, ranging from €30,857 in Leitrim, to €119,571 in Dún Laoghaire-Rathdown.

Table 8: Income Required to Purchase Median Home (FTB) (New and Second-hand)

	Median Price Property bought by First-Time Buyer in 2019	Household Income Necessary to Secure a Mortgage (FTB)
Dún Laoghaire-Rathdown	€465,000	€119,571
Dublin City	€342,750	€88,136
South Dublin	€340,000	€87,429
Fingal	€335,000	€86,143
Wicklow	€310,000	€79,714
Kildare	€305,000	€78,429
Meath	€289,999	€74,571
All	€274,999	€70,714
Cork County	€255,000	€65,571
Galway City	€252,583	€64,950
Cork City	€250,000	€64,286
Waterford County	€227,501	€58,500
Limerick County	€225,000	€57,857
Louth	€218,000	€56,057
Galway County	€216,303	€55,621
Waterford City	€193,500	€49,757
Westmeath	€190,000	€48,857
Kilkenny	€190,000	€48,857
Clare	€189,000	€48,600
Carlow	€188,000	€48,343



	Median Price Property bought by First-Time Buyer in 2019	Household Income Necessary to Secure a Mortgage (FTB)
Laois	€185,000	€47,571
Wexford	€180,000	€46,286
Monaghan	€175,000	€45,000
Kerry	€170,000	€43,714
Offaly	€167,000	€42,943
Tipperary	€167,000	€42,943
Limerick City	€165,000	€42,429
Cavan	€163,500	€42,043
Sligo	€150,000	€38,571
Mayo	€150,000	€38,571
Donegal	€140,000	€36,000
Longford	€136,000	€34,971
Roscommon	€135,000	€34,714
Leitrim	€120,000	€30,857

As is evident in the Table 8 above, and has been noted throughout this document, affordability is a challenge only in certain parts of Ireland. Table 9 illustrates this by providing data on two very different local authorities, Roscommon and Dún Laoghaire-Rathdown.

Homes in Dún Laoghaire-Rathdown are the most expensive in the country, with the median price paid by a first-time buyer for a new home in that area 47% above the national median. Household incomes in Dún Laoghaire-Rathdown are the highest in the country. However, the high property prices mean that it is not possible for a household on the median income to obtain a mortgage for either the median new or second-hand property in the area. However, prices in Dún Laoghaire-Rathdown are rising very slowly, with price inflation of only 0.5% in the 12 months to August 2020.

In 2019, the local authority with the lowest priced new homes for first-time buyer (FTB) was Roscommon; here the median price paid by FTB for a new home was €139,889. The necessary household income to secure a mortgage on this property under current macroprudential rules is €35,971. This figure is below the median household income for Roscommon. However, only 10 new properties were sold to FTB in 2019 (31 sold in total to all buyers). This small number of sales of new homes may be due to construction not being viable at this price point. However, there were 130 purchases of second hand properties by FTB in Roscommon in 2019 at a median price of €135,000 demonstrating that FTB are not frozen out of owner occupation in Roscommon; there appears to be sufficient supply of second hand properties to meet their needs at an affordable price point. There is no sign in



the pricing signal that this situation is under pressure, as house price inflation in the Western region is running at just 1.7%.

Table 9: Housing Markets Nationally, Roscommon and Dún Laoghaire-Rathdown

	National	Roscommon	Dún Laoghaire-Rathdown
New Homes purchased by FTB			
Median Price of New Homes	€340,000	€139,889	€499,999
Number of Sales	4,334	10	162
Household Income Required to Secure Mortgage	€87,428	€35,971	€128,571
Second-hand Properties purchased by FTB			
Second-hand properties FTB	€238,000	€135,000	€435,000
Number of Sales	10,118	130	513
Household Income Required to Secure Mortgage	€61,200	€34,714	€111,857
Price Inflation (2019-2020) (Houses)	-0.4%	1.7%	0.5%
Median Household Income	€49,439	€39,006	€66,203

3.5.2. National application of increased Part V requirement

As demonstrated above, certain parts of the country have a significant affordability requirement and in other areas, the market is currently providing housing at affordable prices.

It is recommended that local authorities should retain the autonomy to determine the affordable housing requirements in their local areas. Under Option (c) where a national 20% Part V requirement would be in place, local authorities would still retain the autonomy to determine the quantity of affordable housing provided in each development. Any residual net monetary value would be applied as a discount on the construction costs as outlined in Example 3 on page 7.

Local authorities undertake this work at present in the preparation of their housing strategies. A new Housing Need and Demand Assessment (HNDA) tool is being prepared to assist in this work. The new HNDA tool comprises a standardised methodology that can quantify the current and projected housing needs of a particular local authority area. The HNDA tool will allow local authorities to estimate the number of households per annum who are likely to have affordability difficulties buying or renting privately. The HNDA is intended to be the central evidence base used to inform the housing strategy. This tool has the advantage of ensuring consistency across all local authorities and will lead to more robust housing policies at a local level, informing local authority development plans.



3.6. TOR 6: Cost rental and Part V

TOR 6: Identify the extent to which Part V could be extended to sustainably include Cost Rental housing. In particular, consider the scale of cost rental development that might be required having regard to the likely overhead costs in managing such developments and the sustainability/cost effectiveness of any such intervention.

3.6.1. Cost rental as a tenure option

The establishment of a cost rental model is intended to promote an increased supply of affordable homes in areas where there is a high demand for housing. Cost rental aims to help households with moderate incomes access affordable, secure tenancies in accommodation suitable to their needs. It is a model of delivery where the provider supplies accommodation and charges rent at a level that is sufficient to cover the capital costs and on-going management and maintenance expenses.

The model differs from private renting where rents are set by the market, which may lead to high rents in high demand areas. In cost rental, rents are not driven by market demand and are more stable over time.

The model has the potential to deliver secure and more affordable rental accommodation for lower to moderate income households. Over the longer term, as cost rental homes are delivered at scale, cost rental is likely to have a stabilising effect on the broader private rented market. Cost Rental homes may be provided by local authorities, Approved Housing Bodies, the Land Development Agency or through other structures that may be deemed appropriate.

In recent years, more households are renting and are doing so for far longer, either by choice or because they cannot afford to buy or have yet to find a home to purchase. Cost rental could be an attractive form of tenure for these households.

A steady support of secure, affordable accommodation is also a key element underpinning our economic competitiveness. Budget 2021 allocated €35million to accelerate delivery of 400 cost rental homes via the AHB sector.

3.6.2. Making legislative provision for cost rental under Part V

Part V of the Planning and Development Act 2000 (as amended) does not include cost rental as an option within the current provisions of the legislation.

Section 96(1) of the Act specifies that housing or land provided under Part V is to be “made available for housing referred to in section 94(4)(a)”.

The housing referred to in Section 94(4)(a) (as amended) is:

- (i). “housing for the purposes of the provision of social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009, and*



(ii). housing for eligible households (within the meaning of section 78 of the Housing (Miscellaneous Provisions) Act 2009”

The first point (i) refers solely to social housing support. The second point (ii) references Section 78 of the Housing (Miscellaneous Provisions) Act 2009. Section 78 is the first section in Part 5 of the 2009 Act which is entitled “Affordable Dwelling Purchase Arrangements”. “Eligible households” as defined in Section 78 are households assessed as being eligible for an affordable dwelling purchase arrangement.

It is difficult to see how either of the housing types referred to in Section 94(4)(a) could be interpreted to allow for the provision of cost rental housing under the existing Part V legislation.

A local authority is permitted to use land acquired under Part V for another purpose that is connected to its function under Section 96(11) of the 2000 Act. However, the land must first be determined to be no longer required for either social housing support or for sale as affordable housing. Under this provision, land acquired under Part V could potentially be used to provide housing for rental to non-social housing support households i.e. cost rental tenants, but only in the limited circumstances where the land was not otherwise required for housing.

If the legislation were to be amended, a third point encompassing cost rental could be added under Section 94(4)(a) of the 2000 Act. It should be noted however that the primary purpose of Section 94(4)(a) is to specify that local authorities must include an estimate in their housing strategy of the social housing support and affordable purchase housing required within their area. If cost rental were to be added as a third point, every local authority would be required to estimate the amount of cost rental housing required. This would be difficult to achieve using the new Housing Need and Demand Assessment (HNDA) tool alone and will require additional analysis to determine cost rental requirements.

3.6.3. Principles of cost rental

The principles of cost-rental are that the property owner can charge a rent sufficient to meet its operational and financing costs, with a small margin to address risk cover and lender requirements. While an open market rental value may not reflect the cost of provision of housing, a cost rent would set a direct link between the rent charged and the capital cost of a property. A reduction in capital cost, reduces the loan financing requirement which reduces the cost of repaying the loan, thereby facilitating a lower rental income requirement.

As demonstrated in Section 3.3.4. a reduction in capital cost achieved through a Part V agreement can reduce the level of rent required from the tenant. Although this is not the only factor in reducing rent levels.



3.6.4. Achieving sustainable cost rental – local authorities or AHBs?

There are a number of cost components which contribute significantly towards reducing the level of rent required from a tenant in cost rental housing:

- (i) Reduced capital cost, e.g. Low-cost land or site servicing grant.
- (ii) Low-cost long-term finance
- (iii) Sustainable management and operational costs

On many sites, Part V could provide lower-cost land as the existing use value of the land may be equivalent to agricultural value. This land, or the discount that it provides to constructed houses could potentially facilitate the delivery of cost rental housing. This is less likely to hold true in brownfield sites in urban areas where the existing use value of land is higher. In these cases, additional measures may be required to reduce rents.

Budget 2021 made a provision for capital funding for cost rental housing to be made available to AHBs by way of an equity loan. AHBs can already access loan finance from market lenders for social housing, but it is not clear that lenders would fund cost rental housing at this early stage in its development. However, the Housing Finance Agency (HFA) has offered to make loan finance available to match the €35m in equity loan funding. This funding will be critical to achieving cost rents in high demand areas that are significantly below the current market rent.

Operating rental properties outside of social housing is not something that local authorities are set up to do. In addition, there is currently no capital funding available to local authorities to deliver properties to be made available at less than market rent in their areas. However, local authorities can access loan finance from the (HFA). Leaving aside the fact that this is a new type of tenure in the Irish housing market, local authorities could, in theory, offer such properties for letting by using a similar financial model to that used by the AHBs.

However, in tandem with low-cost land and low-cost finance, a sustainable cost rental model must include efficient and cost-effective management and maintenance of the properties. In this AHBs would appear to have an advantage.

One of the reasons why local authorities nominate AHBs to purchase Part V housing is the fact that they may also purchasing a quantity of housing in the development at market prices directly from the developer as turnkey housing. Since these houses will be made available to households nominated from the register of qualified households by the local authorities, it makes sense to have as single social housing landlord operating in the development rather than having a mix of local authority and AHB operated housing. If an element of cost rental were included in these developments, it may be far more efficient to have any Part V cost rental properties also owned and managed by the same AHB.

In addition, where Part V properties are obtained in apartment blocks or in urban developments with higher management fees, local authorities tend to nominate AHBs to



purchase these properties. The funding model available to AHBs makes the ongoing payment of management fees viable therefore cost rental could sit well within this model.

Finally, in a scenario where two Part V apartments designated for affordable housing were obtained in an urban infill development, it may not be considered economical to use these as cost rental. Cost rental works best at scale as the management and maintenance costs divided among a small number of properties can be more expensive, thus increasing the cost rent required. However, in urban settings where AHBs already own and operate social housing, it is more likely to have the capacity to manage smaller number of cost rental properties.

3.6.5. Considerations for Cost rental provision under Part V

In considering whether cost rental would be a suitable option under Part V, one key challenge to address is how local authorities should determine when to designate properties as cost rental.

As outlined in Section 3.6.1, if legislative provision is made for cost rental under Section 94(4)(a) of the 2000 Act, local authorities will be required, in the preparation of their housing strategies, to estimate the need for the additional category of cost rental housing in their area. The proposed HNDA tool could assist with this exercise but additional analysis would be required to determine cost rental requirements. If this analysis can be completed, it would inform a local authority if there was a requirement for cost rental or whether market rents were sufficiently low as to minimise the requirement for a cost rental intervention.

For those local authorities who conclude that they do have a need for cost rental, the challenge remains of how to determine what portion of Part V properties should be made available for sale and what portion should be retained for cost rental.

For smaller developments of less than 40 properties, assuming 10% goes to social housing, that just leaves two each for affordable sale and cost rental and may simply not be viable in anywhere other than the larger urban areas. Managing the delivery of these properties will require a level of cooperation and coordination between AHBs and local authorities since the cost rent is a function of the price to be paid for properties.

3.6.6. Cost rental and Part V leasing

One of the options available to satisfy Part V is the grant of a lease to the planning authority. As stated in Circular Planning 11 of 2016, the purpose of this provision was to enable Part V agreements to continue to be made in cases where insufficient capital funding is available for the acquisition of properties. Where capital funding is available, the government's social housing policy will be better achieved by the acquisition of properties under Part V, rather than leasing.



The circular continues to set out that the particular circumstances of build to rent developments may mitigate against the acquisition of housing or land and the leasing option may be more practicable in such developments.

However, the financial arrangements that underpin leasing would potentially make it very difficult to achieve a meaningful reduction on the market rent. Furthermore, unless the properties are purchased, they cannot be maintained as cost rental properties in perpetuity.

Secondly, one of the long-term benefits of owning a stock of cost rental properties is that once the initial loan is repaid, the rent from these properties can contribute to lowering the rents on new properties, a process known as ‘maturation’⁴².

Maturation can never be achieved if the properties are not owned by the housing provider. In the case of Part V leasing, the equivalent net monetary value could be used to discount market rents initially but would run out in the short to medium term, which may put the existing tenants in a position to have to leave the property. Vacancy issues may also arise where a tenant leaves towards the end of the lease term. New cost rent tenants would be unlikely to take up a tenancy for which there would be limited period available at the cost rent.

For build to rent developments, it would appear that social leasing or off-site provision of social or affordable housing are the most suitable options to satisfy Part V.

⁴² NESc, 2014, *Social Housing at the Crossroads: Possibilities for Investment, Provision and Cost Rental*. http://files.nesc.ie/nesc_reports/en/138_Social_Housing.pdf



3.7. TOR 7: Apportioning Part V requirement between social and affordable housing

TOR 7: Make recommendations for how any increase in the Part V requirement should be split between social and affordable housing (and potentially further between Cost Rental and Affordable Purchase) and to the size of development that should be exempted.

3.7.1. Proportion of social versus affordable Part V housing

Part V of the Planning and Development Act 2000 (as amended) allows local authorities to determine the percentage of a site they will seek to purchase at existing use value, up to a maximum of 10%. Prior to the amendment made by the Urban Regeneration and Housing Act, 2015, the maximum amount was 20%.

The provision of affordable housing was stood down in 2011 as part of the government's Housing Policy Statement⁴³. Circular Housing 11 of 2012 advised local authorities that, in light of market conditions, the financial position of the exchequer, the oversupply of affordable housing and the success of Part V in delivering integrated developments, Part V obligations should be discharged through mechanisms that place no additional funding pressure on local authorities. These were suggested as financial contributions, a reduced number of properties or lands in lieu. Circular Housing 12 of 2015 rescinded the 2012 circular and advised local authorities to use Part V to maximise the potential for the immediate delivery of social housing support. Affordable housing was not referenced.

The Housing Agency has conducted a review of local authority development plans. Some development plan objectives from the early 2010s did not adopt the maximum available Part V requirement of 20%. As the demand for affordable housing decreased during this period, local authorities were unable to demonstrate a sufficient social and affordable housing need to adopt a 20% Part V requirement. For example, the pre-2015 Louth and Meath development plans tie their Part V figure to their housing strategy analysis of households experiencing affordability issues. Their Part V percentages were set at 12% and 16% respectively as their housing strategy analyses found that this was the percentage of households experiencing affordability issues.

This demonstrates the importance of ensuring that local authorities have the flexibility to take the proportion of housing that is linked with the affordable and social housing support needs in their area, and no more. Under Option (b) this would be achieved by retaining the current system of housing strategies and development plans. Under Option (c) this could still be achieved by breaking the link between the Part V requirement on each site and the social and affordable requirements of the local authority as set out in its housing strategy.

⁴³ DHLGH, 2011, *Housing Policy Statement – June 2011*. <https://www.housing.gov.ie/file/1440>



The potential addition of a cost rental element to affordable housing may require supplementary assessments of affordability as local authorities may be required to examine the rental market as well as housing for purchase, as considered in Section 3.6.

A further point for consideration is that in the period 2006 to 2011, Part V consistently failed to provide the volume of social housing expected. Only 38% of properties provided under Part V were for social housing support and only 12.6% of total housing completions (excluding one off houses) in 2008 were Part V. The DKM report⁴⁴ acknowledges that developers favoured affordable housing over social housing. Given the likely ongoing need for social housing provision, it is essential that this practice is avoided.

One of the additional considerations under Option (b) set out in Section 2.2.2. was that a minimum of 10% of the equivalent net monetary value be used for social housing support.

Specifying a minimum level of social housing provision would assist in protecting the supply of social housing support and ensure that it is not displaced by affordable housing. It is imperative that the proportion of social versus affordable housing in a development does not constitute an element of Part V negotiations.

Where a local authority has no requirement for social housing in an area due to an over-concentration of social housing support, they can specify an exception for that area in their development plan, as is currently done in many local authorities. For example, the 2011 development plan for Dublin City Council specifies a Part V exemption for Ballymun. An additional option open to local authorities is off-site social housing provision. Otherwise, the local authority should not favour affordable housing at the expense of social housing support in Part V negotiations and agreements. While certain developments may deliver housing that is considered unsuitable for social housing support because of the cost or other aspect of the housing or site location, for the majority of developments, local authorities with an identified need for social housing support should be encouraged to take as many properties as possible under Part V. This achieves the twin policy objectives of delivering social housing support and creating integrated communities.

3.7.2. Affordable housing and cost rental

In terms of any split between affordable purchase housing and cost rental, cost rental should be available as an option for local authorities on a case by case basis. Some sites, locations and housing types are more suitable for cost rental than others. Local authorities will also have regards to local rental market conditions and affordability requirements, as well as local demand.

⁴⁴ DKM and Brady Shipman Martin, 2012, Review of Part V of the Planning and Development Act, 2000. Prepared for The Housing Agency.



3.7.3. Size of development to be exempted

Currently, Section 97(3) of the Planning and Development Act 2000 (as amended) permits a person with a development of “9 or fewer” houses or “for housing on land of 0.1 hectares or less” to apply for certificate of exemption from the Part V requirement. Prior to the Urban Regeneration and Development Act 2015, a person with a development of “4 or fewer” houses could apply for a certificate.

The reasoning behind the exemption for developments of four or fewer properties was the smallest development size which could provide a whole house under a 20% Part V requirement. As the Part V requirement was reduced to 10%, this provision was amended to “9 or fewer”.

If the Part V requirement is to be increased to 20%, Section 97(3) should be amended accordingly with the size of the exempted development reduced to four houses or fewer.

As discussed in Section 2.4, Part V does not apply to developments on land not zoned for residential use. Considerations on changing this are set out in Section 3.9.



3.8. TOR 8: Development plans and Part V

TOR 8: Examine how an increase in the Part V requirement would interact with county development plans that have been made before the commencement of the increase, make recommendations as to the applicability of the amended Part V requirement to ensure an adequate transition period for existing and potential applications that are predicated on current Part V percentages and provide an assessment of the timeframe for the measure to have an impact in terms of available units.

3.8.1. Part V requirement and development plans – legal structure

Under the Planning and Development Act 2000 (as amended), local authorities are obliged to make a development plan every six years. One element of this development plan is the housing strategy. This is defined in Section 94(1)(a) of the Act as a strategy to ensure that proper planning and sustainable development, providing for the housing of the existing and future population of the area in the manner set out in that strategy.

The percentage of land to be reserved for Part V is provided for in each local authority's development plan, with current legislation specifying that this shall not be greater than 10% of the land zoned for residential use or for a mixture of residential and other uses. A local authority may elect to reserve less than 10% of the land, but not more.

It is important to note that, in a scenario where the legislation as written has been updated to allow local authorities to reserve 20% of land for Part V, if a particular local authority's development plan still states a figure of 10%, it is the 10% figure which is legally binding. Therefore, if the Part V percentage is increased in legislation, it will have no effect until the increase is reflected in local authority development plans (see 3.8.2 for details).

3.8.2. Adoption of a new Part V requirement

In order for an updated Part V requirement to be applied as a planning condition, the Part V objectives of the relevant development plan must specify the amended figure.

Within the existing structure of the Act, a new Part V requirement could be introduced in one of two ways, either through the adoption of a new development plan by a local authority, or by making a variation to an existing development plan.

Local authorities draft and adopt new development plans every six years. As shown in Table 10 below, the majority of development plans are currently under review and almost all of these new development plans will be adopted in 2021 and 2022. Given the need to notify parties of the updated Part V requirement, it is likely that these plans will still include an objective for a 10% Part V requirement. If local authorities were to wait until the next cycle of their development plan to update the Part V requirement, the first affordable properties under Part V may not be completed until 2030 at the earliest.



Table 10: Local authority development plans

Local Authority	Current plan period	Consultation ongoing
Carlow County Council	2015-2021	Yes - adoption in 2022
Cavan County Council	2014-2020	Yes - adoption in 2022
Clare County Council	2017-2023	Yes - adoption in 2022
Cork City Council	2015-2021	Yes - adoption in 2022
Cork County Council	2014-2020	Yes - adoption in 2022
Donegal County Council	2018-2024	No
Dublin City Council	2016-2022	Yes - adoption in 2022
Dún Laoghaire-Rathdown County Council	2016-2022	Yes - adoption in 2022
Fingal County Council	2017-2023	No
Galway City Council	2017-2023	No
Galway County Council	2015-2021	Yes - adoption in 2021
Kerry County Council	2015-2021	Yes - adoption in 2022
Kildare County Council	2017-2023	No
Kilkenny County Council	2014-2020	Yes - adoption in 2021
Laois County Council	2017-2023	Yes - adoption in 2021
Leitrim County Council	2015-2021	Yes - adoption in 2021
Limerick City & County Council	2010-2016	Yes - adoption in 2022
Longford County Council	2015-2021	Yes - adoption in 2021
Louth County Council	2015-2021	Yes - adoption in 2021
Mayo County Council	2014-2020	Yes - adoption in 2020
Meath County Council	2013-2019	Yes - adoption delayed
Monaghan County Council	2019-2025	No
Offaly County Council	2014-2020	Yes - adoption in 2021
Roscommon County Council	2014-2020	Yes - adoption in 2021



Local Authority	Current plan period	Consultation ongoing
Sligo County Council	2017-2023	No
South Dublin County Council	2016-2022	Yes - adoption in 2022
Tipperary County Council	2009-2015	Yes- adoption in 2022
Waterford City & County Council	2013-2019	Yes
Westmeath County Council	2014-2020	Yes - adoption in 2021
Wexford County Council	2013-2019	Yes- adoption in 2021
Wicklow County Council	2016-2022	Yes- adoption in 2021

3.8.3. Variation of a development plan

While development plans are reviewed and drafted every six years, a variation may be made to an existing development plan at any time. The procedure for making a variation to an adopted development plan is set out under Section 13 of the Planning and Development Act 2000 (as amended).

In order to make a variation to a development plan, the members of that local authority may submit a resolution requesting that the Chief Executive of the local authority prepare a report on the proposed variation. Three quarters of the members of the authority must approve this resolution, and copies of the proposed variation must be sent to the Minister for Housing, Local Government and Heritage, the Minister for Arts, Heritage and the Gaeltacht, the Office of the Planning Regulator, An Bord Pleanála, the relevant regional assembly, and, where appropriate, to any adjoining planning authority, the prescribed authorities, and any local community development committee within the area of the development plan.

The Chief Executive of the local authority must then submit a report on the proposed variation within four weeks, and a report on any submissions or observations received within eight weeks of giving notice to the parties listed previously. The Chief Executive's report on the proposed variation will then be considered by the members of that local authority within six weeks of the submission of the report. The members may then make a resolution to make the variation or refuse to make the variation. If adopted, the variation will then have effect from the date that the variation is made.

Given the lead in time for the preparation and adoption of an amendment to the Part V legislation, there would appear to be limited scope for integrating amended Part V provisions into development plans which are scheduled for publication in 2021 or 2022. Variations to development plans would seem a more likely option.



3.8.4. Changing development plans nationally through legislation under Option (c)

One alternative to the scenario of amending 31 local authority development plans or awaiting the next cycle of development plans, would be to amend the Planning and Development Act to mandate a national Part V requirement and remove the requirement to specify a percentage in local development plans. This is what is envisaged by Option (c). Under Option (b) the Part V requirement remains linked to the social and affordable housing needs as set out in each local authority's housing strategy and could not be overridden in legislation.

As set out in Section 3.5, housing is affordable at market prices in many local authority areas, as are market rents. Therefore, some local authorities with no affordability issues only need to acquire housing through Part V for social housing support and many local authorities will require their current level of Part V housing social housing support and a smaller proportion for affordable housing. As stated previously, the decision on the amount of affordable housing required must remain a function of the local authority to be determined in their housing strategy.

However, if it were decided to proceed with Option (c) where all local authorities would benefit from 20% of the planning gain on all sites, but not be required to purchase 20% of new homes, it may be possible to legislate for a change in local authority development plans without requiring a variation of those plans. As described previously, uncoupling the local requirement for social and affordable housing from the requirement to gain 20% of the net monetary value of the site introduces consistency for developers nationally. This consistency could be implemented through legislation, although legal advice and a thorough study of potential implications are recommended.



3.9. TOR 9: Any other relevant matters

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3.9.1. Applying Part V to land not zoned for residential development

Currently, the legislation permits local authorities to apply the Part V requirement to planning permissions granted on land which has been zoned for residential use or a mix of uses including residential. This is set out in Section 94(4)(c) of the Planning and Development Act:

94(4)(c) Subject to paragraph (d), a housing strategy shall provide that as a general policy a specified percentage, not being more than [10 per cent], of the land zoned for residential use, or for a mixture of residential and other uses, shall be reserved under this Part for the provision of housing for the purposes of either or both subparagraphs (i) and (ii) of paragraph (a).

Paragraph (d) allows the local authority to obtain more than 10% of the land if the developer agrees, however any additional land will not be obtained using the Part V formula.

Subparagraphs (i) and (ii) refer to social and affordable housing respectively.

The vast majority of residential development on land which is not zoned residential is one-off rural housing; while this is not zoned land, a development plan will set out the circumstances under which one off rural housing is permissible. However, local authorities may grant planning permission for larger developments on this type of land as “material contraventions” of the development plan. These permissions are subject to public consultation and the resolution to grant permission must be passed by the elected members of the local authority.

Data from the DHLGH⁴⁵ shows that in the period 2002-2012, local authorities approved 715 planning applications where there was a material contravention of the development plan. Presumably, many of these were for commercial or industrial developments which would not be subject to Part V. However, it is expected, although not apparent from the data available that a proportion were for residential developments on unzoned or commercially zoned land, which were not subject to Part V. In these cases, the landowner was the beneficiary of a substantial increase in the market value of their land due to the grant of planning permission, with no means under the current legislation for the local authority to capture any of this planning gain.

Due to data limitations, it is not within the scope of this review to quantify the amount of potential Part V housing on land which is not zoned residential. However, it is suggested to explore this issue further to determine if this might be an ‘untapped’ source of social and affordable housing.

⁴⁵ Dataset: DHLGH, *Planning applications where material contravention of the Development Plan 2002-2012*, accessed from data.gov.ie



Additionally, it would seem fairer were Part V to apply to all developments above a certain number of properties, regardless of where they are located.

3.9.2. Applying Part V to all residential development

As outlined in Section 3.7, currently residential or mixed-use developments of nine homes or fewer or on land which is 0.1 hectare or less are eligible for a certificate of exemption from Part V.

One proposal which might be examined would be remove this provision in the legislation and apply Part V to all residential development.

Between 2012 and 2019⁴⁶, an average of 3,900 single dwellings were completed per annum. In 2012, this represented 71% of all new homes. In 2019, as the numbers of scheme housing developments and apartments grew, the proportion of new single dwellings dropped to 24% of all new homes.

It is clear from the above data that one-off housing is a substantial element of new housing delivery. Currently, these applicants for planning permission can apply for a certificate of exception from Part V if they are built on zoned residential land, and Part V does not apply if they are built on unzoned land.

As discussed in Section 3.7, the logic behind this is that small developments and one-off houses would be unable to deliver one whole property under a Part V condition. 10% or even 20% of the site area of a one-off house would generally be too small for the local authority to construct a house on and the housing would likely be located in areas of very low demand. If these sites were subject to a Part V requirement, the only mechanisms for delivering Part V homes would be a financial contribution or off-site delivery. Financial contributions are currently not permitted in legislation and there is no stated intention to consider their re-introduction.

Off-site delivery would be problematic for self-build households who would not have the necessary cash reserves to purchase a second house and sell it to the local authority.

In addition, a proportion of one-off homes are built on family farms or have an occupancy condition attached to the planning permission which prohibits them from selling the property for a number of years. In this case, the landowner does not receive a clear planning gain to the market value of their property as in order to obtain the planning condition they have entered an agreement not to sell the property.

Given these practical difficulties of implementing a Part V requirement on rural one-off housing, alternative policies to discourage this type of development such as stricter planning

⁴⁶ CSO data accessed via The Housing Agency Data Hub: <https://www.housingagency.ie/data-hub/new-dwelling-completions>



control around one-off housing, a tax on one-off housing on non-family land or an increased rate of stamp duty may be more effective but are outside the scope of this report.

3.9.3. Transition Processes

A key learning following the 2015 amendments to Part V was the importance of setting out clear transition procedures and how to approach projects that are at various stages of development, including historic planning permissions and unfinished developments.

If it is decided to amend Part V, it is proposed that The Housing Agency would draft a set of clear and comprehensive transition procedures for local authorities to follow.

3.9.4. Legislative Amendments

There are three specific areas of the legislation that should be considered for review if any changes are being contemplated. These are:

- a. Sections 97(12)(b)(ii)(I) & (II) and Section 96B(10) refers to 4 houses and appears not to have been amended by the 2015 Act.
- b. Consider including a provision in Section 96(3)(a) to allow the land to be transferred to a person nominated by the authority which would allow the local authority facilitate the purchase of land by an AHBs.
- c. Consider including a provision in Section 96(3)(b)(iva) to allow the grant of a lease to a person nominated by the authority which would allow the local authority facilitate the leasing of Part V properties by an AHBs.



Appendix A – Terms of Reference

1. Identify the extent to which it is considered that an affordability issue arises that would support a Part V intervention.
2. Examine (including conducting an econometric analysis either internally or with external support if necessary) the likely impact on housing supply if the Part V requirement was increased from the current 10% back to 20% (or above) and identify any measures that should be taken to protect housing supply.
3. Carry out an analysis to estimate the average saving to the State on a Part V unit and what are the likely range of sale and rental prices of those units as affordable housing.
4. Identify the optimum structure (whether direct sale without further subsidy, sale under the Affordable Purchase Scheme or under some other structure) that should apply to the sale of affordable units under Part V to limit any risk/financial exposure to local authorities.
5. Consider whether an increased percentage in Part V for affordable homes should apply nationally and to units at all price points or should it, for example, be limited to particular price points or areas with identifiable affordability issues. In relation to this, consider the impact of an expanded Part V affordable requirement on overall house building activity, including any possible impact on viability and the possible requirement for further State interventions/support.
6. Identify the extent to which Part V could be extended to sustainably include Cost Rental housing. In particular, consider the scale of cost rental development that might be required having regard to the likely overhead costs in managing such developments and the sustainability/cost effectiveness of any such intervention.
7. Make recommendations for how any increase in the Part V requirement should be split between social and affordable housing (and potentially further between Cost Rental and Affordable Purchase) and to the size of development that should be exempted.
8. Examine how an increase in the Part V requirement would interact with county development plans that have been made before the commencement of the increase, make recommendations as to the applicability of the amended Part V requirement to ensure an adequate transition period for existing and potential applications that are predicated on current Part V percentages and provide an assessment of the timeframe for the measure to have an impact in terms of available units.
9. Any other relevant matters.