



An  
Bord  
Pleanála

## Inspector's Report ABP-306397-20.

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<b>Type of case</b>	Section 96 referral - dispute relating to Part V.
<b>Location</b>	Cahermore, Enniscrone, Co. Sligo.
<b>Planning Authority</b>	Sligo County Council
<b>Planning Authority Reg. Ref.</b>	19/91.
<b>Referral</b>	
<b>Referred by</b>	Anthony O' Hora.
<b>Owner/ Occupier</b>	Edward Kilcullen.
<b>Date of Site Inspection</b>	26 <sup>th</sup> March 2020.
<b>Inspector</b>	Mairead Kenny.

## 1.0 Introduction

- 1.1. The dispute relates to a recently permitted development of 22 holiday home units. The site is part of the site of a larger permitted holiday home scheme. Only 16 of the permitted 38 units were completed.
- 1.2. There is no dispute between the parties regarding the method of contribution, which would be cash payment. The dispute relates to the amount.
- 1.3. The first party describes the case as relating to a straightforward interpretation of whether 20% or 10% under Part V would apply.
- 1.4. In setting the sum payable the planning authority has taken into account the payments under the previous permission.

## 2.0 Site Location

- 2.1. The subject site is located in the village of Enniscrone and to the rear (east) of an existing, centrally located holiday home scheme.
- 2.2. The subject site is a relatively small portion of lands under the applicant's control in the immediate vicinity. The site is broadly L-shaped and is immediately contiguous to the holiday home scheme to which it would be connected in terms of access roads and services.

## 3.0 Planning application

### 3.1. Decision

- 3.2. Under reg. ref. PL 19/91 the permitted scheme of 22 no. holiday homes was granted permission by the planning authority on 18 October 2019. The description of the development is:

development consisting of the construction of a total of 22 new holiday homes comprising eight detached, four semi-detached, and two blocks of three houses to complete the existing holiday home development which was previously granted permission under planning references PL 04/1351 and PL

06/1006 together with all associated site works and to connect into existing services at Cahermore Holiday Village.

### 3.3. Condition 6 states

Prior to commencement of development, you shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000 (as amended). Where such agreement is not reached within eight weeks from the date of this order, the matter in dispute may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

Reason : To comply with the requirements of Part V of the Planning and Development Act 2000 (as amended) and those of the Housing Strategy incorporated as part of the Sligo County Development Plan 2017 – 2023.

### 3.4. **Planning Authority Reports**

#### 3.5. Planning Reports

3.5.1. In the assessment of the application by the planning authority the planner's report of 30 April 2019 in section 9 deals with Part V and notes:

- The applicant's proposal for compliance with Part V proposes the lease of a three-bedroom house and a two bedroom house for a period of 15 years to 'suitable retirees' and that this option (No. 4 from the January 2017 Ministerial guidance) is the applicant's preferred option.
- The proposal has not been received by the Housing Section who request that a proposal for the transfer of completed dwellings either on site or at a different location be made and that corresponding calculation/costs/drawings be presented.
- Further information is recommended in relation to the above.

3.5.2. The further information request issued indicated that the proposal for compliance with Part V it is not satisfactory and that due to existing local housing needs the planning authority requires the transfer of completed dwellings either on-site or at a different location.

- 3.5.3. The applicant's response to the request for further information was received by the planning authority on 4 October 2019. The relevant issues are largely set out in the referral documentation. The applicant considers that the requirement is for 10% and a much lower site valuation and offers €42,744 to settle under Part V.
- 3.5.4. The second planners report recommended permission including subject to condition relating to payment of €170,975.
- 3.5.5. The planning condition (number 6) did not specify an amount but provided for agreement in writing prior to commencement of development.
- 3.6. Other Technical Reports
  - 3.6.1. The report of the Housing Section in an email dated 25<sup>th</sup> of April 2019 was in line with the request for further information.
  - 3.6.2. Correspondence from the Housing Department in an email dated 10 October 2019 notes the agreement in relation to reg. ref. 04/1351 transfer units to the value of €295,320. A net amount of €124,345 has been paid to date, which leaves a balance of €170,975 outstanding. Only payment of the sum of this €170,975 will satisfy the Part V condition on this site.

## 4.0 Planning History

- 4.1. Planning reg ref 04/1351
  - 4.1.1. Under planning reg ref 04/1351 permission was granted for 38 no. Holiday homes. This application was subject of a minor amendment relating to house types under reg. ref. 06/1006, which was permitted subject to the conditions of the parent permission.
  - 4.1.2. The application details show a commencement notice for a single phase of this development (38 units) with a commencement date of 1 September 2006. The records show an extension of duration of this permission to 11 October 2015 was granted. 16 no. units were constructed under the parent permission. 22 no. units were **not** constructed.
  - 4.1.3. Condition 19 of reg. ref. 04/1351 referred to payment under Part V.

- 4.1.4. A letter on file dated 16<sup>th</sup> of December 2008 from Sligo County Council to Mac Hale solicitors in relation to enforcement including the matter of condition 19 of PL 04/1351 stated that the amount of €101,000 is outstanding.
- 4.1.5. A solicitors letter in response on file which is dated 22 October 2009 to Sligo County Council refers to the purchase of 2 no. apartments at Main Street, Enniscrone for the sum of €950,000, that Tony and Anthony O' Hora contributed the agreed sum towards this purchase in compliance with condition 19 of PL 04/1351. The Council was requested to issue a letter confirming that the condition has been fully complied with. The councils reiterated by letter of 16<sup>th</sup> of November 2009 that the amount of €101,000 is outstanding.
- 4.1.6. There is no subsequent correspondence on the Council's website in relation to the planning file.

**Planning reg. ref. 04/615**

PL 04/615 relates to permitted development of 39 units at adjacent lands, which has been completed.

## 5.0 Policy Context

### 5.1. Sligo County Development Plan 2017-2023

**SP-HOU-2 is to reserve 10% of eligible units which are subject to new residential development for the development of social housing units**, in accordance with the Housing Strategy and the requirements of Part V.

Section 5.3 notes that a **high proportion (57%) of applicants on the housing list are one-person households**.

P-SHOU-1 is to promote social inclusion and ensure housing is well distributed.

P-SHOU-2 as to ensure that development in areas subject to an agreement under Part V is integrated into the housing scheme in a manner which avoids undue physical and social segregation.

P-SHOU-3 is to **ensure that the supply of housing units under the Housing Strategy reflects demographic characteristics**.

P-HSH-4 is to ensure that new holiday home developments are constructed to the standards and specifications applicable to housing intended for permanent occupation.

The Housing Strategy notes that under the Urban Regeneration and Housing Act the **making of cash payments in lieu of social housing is to be discontinued** and for the requirement for up to 10% social housing and developments in excess of 9 no. units. The strategy also refers to the national policy that affordable housing schemes should be stepped down.

It is considered **reasonable to apply a requirement of 10% of all land zoned** for residential use or a mixture of residential and other uses, be reserved for the purposes of Part V.

## 5.2. **Enniscrone Local Area Plan 2014-2020**

The site is zoned for residential development and is part of a Strategic Land Reserve, which recognises the development potential of these lands and seeks to prevent their utilisation for other possibly inappropriate activities by safeguarding them for future housing development.

The plan notes that the provisions of Part V apply to lands zoned residential.

SP-HOU-2 is to reserve 20% of eligible sites which are subject to new residential development for the development of social and affordable units, in accordance with the Housing Strategy and the requirements of Part V.

## 6.0 **The Point in Dispute**

### 6.1. **Referrer's Case**

6.2. The referrer's submission contains the following information:

- A letter dated 30<sup>th</sup> of September 2019 to the Housing Section notes that on foot of reg ref 04/1351 the Council purchased 4 no. apartments and that the Part V obligation has been satisfied for 38 units with the exception of the remainder of the cash payment equivalent to be paid for the unbuilt 22 units, which are subject of this new application.

- The old balance due under the 2004 valuations was €170,975 - based on historical balance calculated in 2006 and based on a 20% ruleset with per acre valuation of €259,000. Under the current Part V requirements only 10% is required on a much lower site valuation. An offer in the amount of €42,744 is proposed.
- Enclosed email correspondence notes that what is required from the Board is a straightforward interpretation by the Board of the 20%/10% Part V rule.
- A separate valuation could then be obtained by the Council to determine current land valuations if needed subsequently.
- The correspondence from the Housing Department notes the agreement in relation to reg. ref. 04/1351 to transfer units to the value of €295,320 in an agreed location within the zoned area of Enniscrone to satisfy your obligation under Part V.
- Copies of two letters from the housing section to applicant's agent are enclosed. The first refers to the adjacent 39 unit development described as the first phase. The letter goes on to describe the meeting which took place on 11 April 2006 in relation to the second phase of the holiday scheme, the agreement that units within the scheme would not be transferred, the agreement that 20% of the land equates to a monetary value of €295,320 and that the developer would transfer units or land to the value of €295 320 in an agreed location in the zoned area of the town. The second letter notes the agreed location is 4 no. apartments at Beachside apartments. The total purchase price of these units is €950,000 and Sligo County Council will pay the remaining €654,680, i.e. €950,000 less €295,320.

### 6.3. Planning Authority Response

The planning authority response to the referral states:

- The agreement in relation to PL 04/1351 was that the applicant would transfer units to the value of €295,320 in an agreed location within the zoned area of Enniscrone, in order to satisfy his application under Part V of the planning and development act 2000. It was agreed that for apartments at Beachside

apartments in Enniscrone would be purchased at a cost of 950,000 with the council to pay €654,680 i.e. €950,000 less €295,320.

- A commencement notice was submitted to the Council on 5 December 2006 in respect of the construction of 38 units under PL 04/1351. 16 units have been completed. A net €124,345 has been paid by the applicant to date which leaves a balance of €170,975 outstanding. It is the view of the Council that only the payment of the sum of €170,975 will satisfy the Part V obligations on this site.

#### 6.4. Further Responses

None.

### 7.0 Statutory Provisions

#### 7.1. Planning and Development Act, 2000

Section 94(4)(a) - a housing strategy shall include an estimate of the amount of social housing and housing for eligible households required in the area of the development plan.

Section 94(4)(c) – a housing strategy shall provide that as a general policy the specified percentage **not being more than 10 per cent of the land zoned** for residential use shall be reserved for the purposes set out in section 94(4)(a).

Section 96(1) - **requirement to apply this section on lands zoned for residential use.**

Section 96(2) - the planning authority or Board shall attach a condition requiring agreement with the planning authority in relation to matters referred to in paragraph (a) or (b) of subsection (3).

Section 96(3)(a) – subject to paragraph (b) an agreement under this section shall provide for the transfer to the planning authority of the ownership of such part or parts of the land which is subject to the application for permission as specified by the agreement to be reserved for the provision of housing referred to in section 94(4)(a).

Section 96(3)(b) - **instead of the transfer of land** and subject to paragraph (c) an agreement under this section may provide for

- (i) **building and transfer on completion .... of houses on the land**
- (iv) **transfer ....of houses on any other land within the functional area**
- (iva) the **grant to the planning authority of the lease of houses** on the land which is subject of the application for permission or any other land within the functional area
- (vii) **a combination** of transfer of land and the doing of one or more of the things referred to in the preceding subparagraphs
- (viii) a combination of things referred to in subparagraphs (i) to (iva).

Section 96(c) - specifies **matters which the planning authority shall consider** in considering whether to enter into an agreement under paragraph (b). These relate to the **achievement of the objectives of the housing strategy**, best use of resources, the need to counteract undue segregation, the provisions of the development plan and the time within which the housing is likely to be provided as a consequence of the agreement.

Section 96(d) - sets down the basis for agreement of the price of houses where they are to be transferred to the planning authority.

Section 96(5) refers to the **determination by the Board in the case of a dispute other than one that falls within subsection (7)**.

Section 96(6) refers to the calculation of the sum relevant where ownership of land is transferred to a planning authority pursuant to subsection (3).

**Section 96(7) refers to the role of a property arbitrator**, in default of agreement, in fixing of:

- (i) the number and price of houses to be transferred under subsection (3)(b)(i), (iv), (vii) or (viii)
- (ia) in the case of an agreement referred to in subsection (3)(b)(iva), the number of houses and rent payable
- (iii) the compensation payable under subsection (6)

- (iv) the payment of an amount by the planning authority under subsection (3)(b)(vi), (vii) or (viii) and
- (v) the allowance to be made under section 99(3)(d)(i).

Section 96 (8) - where agreement is not entered into before the expiration of eight weeks from the date of grant permission the dispute may be referred to

- (a) if it relates to a matter falling within subsection (5), to the Board or
- (b) if the dispute relates to a matter falling within subsection (7) to the property arbitrator.

## 7.2. **Part V of the Planning and Development Act 2000 – Guidelines issued by the Minister for Housing, Planning, Community and Local Government under section 28 of the PDA 2000. January 2017**

This notes the types of Part V agreement that are set out under section 96(3). Option 4 is the **lease of housing units** on the subject site or on any other land within the functional area of the local authority. It is clarified that this option which was inserted into the Act in 2015 should be used in cases **where there is insufficient capital funding available for the acquisition of units**. Otherwise the local authority should seek the acquisition of houses on the development site.

The guidelines stress that the **preferred option is the acquisition of units on the site** but recognises that none of the units on the site may be suitable to the needs of the local authority by reason of size/land development costs/significantly higher specification/excessive annual management fees. In those cases the local authority must **pursue one of the other available options** for example the acquisition of land on the development site or the building or acquisition by the developer of houses/units elsewhere in the functional area of the local authority and the transfer of those houses to the local authority or persons named by the local authority. The number of houses transferred under section 96(3)(b)(iv) should be broadly equivalent had agreement been secured for provision of houses on the development site. In all cases the net monetary value must be achieved.

Where dispute relates to a matter falling within section 96 (7) the dispute may be referred to a property arbitrator.

## 8.0 Assessment

I consider that there is no dispute over the principle of the condition. Part V is relevant to the proposed development, which is on zoned land.

In the foregoing I consider:

- the remit of the Board and the matter in dispute
- the nature of the application and permission
- the legislative context for Part V agreements
- the merits of the cases presented.

### 8.1. The remit of the Board and the matter in dispute

- 8.1.1. The role of the Board in disputes relates to any matter which may be subject of an agreement under this section other than a dispute which falls under subsection (7) which relates to matters to be evaluated by a property arbitrator.
- 8.1.2. The substance of the submissions address issues relating to current and previous land values and suggest sums of money which are considered payable in this regard.
- 8.1.3. However, the essence of the question posed is that what is required is a straight-forward interpretation by the Board of the 20%/10% Part V rule. The applicant's submission make it clear that a separate valuation could then be obtained by the Council to determine current land valuations if needed subsequently.
- 8.1.4. Having regard to the above, I am satisfied that the matter subject of the dispute falls within the remit of the Board.

### 8.2. The nature of the application and permission

- 8.2.1. The description of the development refers to the completion of an existing holiday home development, which was previously granted permission under planning references PL 04/1351 and PL 06/1006.

- 8.2.2. The permission granted under PL 19/91 is for the same number of units (22 no.) as the incomplete section of the development (i.e. the part of the previously permitted scheme which was not undertaken).
- 8.2.3. I consider to be of particular importance that this is a stand-alone planning application – it is not a variation to the previous permission, which lapsed on 11 October 2015. The development will have a separate commencement notice.
- 8.2.4. Having regard to the above, any conditions under this permission shall
- relate solely to the development permitted under PL 19/91
  - be interpreted on the basis of current legislation.

### 8.3. **The legislative context for Part V agreements**

- 8.3.1. Regarding the basic question which the referrer has posed, the relevant requirement shall relate to 10% and not to 20%. I consider that this is clear from Circular: Housing 33 of 2015 which was issued by the Department of Environment, Community and Local Government, which clearly states that planning applications received from 1 September 2015 must be determined under the new arrangements. The revised Part V obligations and options for delivery include that the percentage of land that must be provided for social housing in a housing development was changed to 10% from 20%.
- 8.3.2. In relation to the type of agreements which may be made there is presently no option to accept cash sums. A range of other options are outlined in section 96 of the Act.

### 8.4. **Merits of the points of dispute**

- 8.4.1. Following on from my conclusions earlier in relation to the stand-alone nature of this application, it would not appear to me to be appropriate to determine the amount payable with reference to a condition made under different legislation at a time of high land values and attached to a permission, which has now lapsed. Sligo County Council is approaching the matter as a legacy issue related to an incomplete development and in relation to which a 20% Part V requirement would have been relevant. It would appear to me that if the previously outstanding sum of €170,975 it was to be pursued, an agreement under Part V in relation to the current application

PL19/91 it is not the appropriate mechanism and it appears to fall under planning enforcement.

- 8.4.2. I consider that it is clear that the legislative requirement in this case is that the percentage of land that must be provided for social housing is 10%. This conclusion addresses the substance of the matter of dispute and is sufficient to address the question presented by the referring party.
- 8.4.3. As an aside, it is not clear to me how a cash payment may be made under the present legislative context. However, I do not consider that this matter is part of the question before to the Board.

## 9.0 Recommendation

- 9.1. I recommend that the Board should decide this dispute in accordance with the following draft order.

**WHEREAS** a dispute has arisen between Sligo County Council and Edward Kilcullen in the making of an agreement in relation to Part V of the Planning and Development Act 2000 under condition 6 of planning reg. ref. 19/91:

**AND WHEREAS** referred this matter was referred by Anthony O' Hora for review to An Bord Pleanála on the 9<sup>th</sup> day of January, 2020:

**AND WHEREAS** An Bord Pleanála, in considering this case, had regard particularly to –

- (a) Section 96 of the Planning and Development Act, 2000, as amended,
- (b) Guidelines on Part V of the Planning and Development Act issued by the Minister for Housing, Planning, Community and Local

Government under section 28 of the Planning and Development Act, 2000 in January 2017,

- (c) Circular: Housing 33 of 2015, which was issued by the Department of Environment, Community and Local Government,
- (d) the planning history of the site,
- (e) the provisions of the Sligo County Development Plan 2017-2023 and the Enniscrone Local Area Plan 2014-2020.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) Planning reg. ref. 19/91 is a stand-alone planning application which is not a variation of any previous permissions at this site.
- (b) The amount payable falls to be considered *de novo*, without reference to any previous permission at the site and in accordance with current legislative provisions and guidance.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 96(5) of the 2000 Act, hereby decides that in making an agreement under Part V the percentage of land that must be provided for social housing in the housing development is 10%.

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Mairead Kenny  
Senior Planning Inspector

3<sup>rd</sup> June 2020