



Comhairle Contae **Lú**
Louth County Council

LOUTH COUNTY COUNCIL

TAKING IN CHARGE POLICY/ RELEASE OF BOND FOR COMPLETED PRIVATE HOUSING DEVELOPMENTS

TAKING IN CHARGE POLICY: OVERVIEW & BACKGROUND

LEGISLATION

Section 180 (see below) of the Planning and Development Act 2000 (as amended), requires planning authorities to commence taking in charge procedures in relation to residential developments, finished or unfinished, where certain conditions have been met. Section 34(4)(i) of the Act provides the legal basis for a planning authority to attach to a planning permission “conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management)”.

S. 180.— (1) F759[Subject to subsection (7), where a development] for which permission is granted under section 34 or under Part IV of the Act of 1963 includes the construction of 2 or more houses and the provision of new roads, open spaces, car parks, sewers, F760[water mains] or F760[service connections (within the meaning of the Water Services Act 2007)], and the development has been completed to the satisfaction of the planning authority in accordance with the permission and any conditions to which the permission is subject, the authority shall, where requested by the person carrying out the development, or, subject to subsection (3), F761[by the majority of the owners of the houses involved], F759[not later than 6 months after being so requested], initiate the procedures under section 11 of the Roads Act, 1993.

(2) (a) Notwithstanding subsection (1), where the development F762[referred to in subsection (1)] has not been completed to the satisfaction of the planning authority and enforcement proceedings have not been commenced by the planning authority within F759[4 years] beginning on the expiration, as respects the permission authorising the development, of the appropriate period, within the meaning of section 40 or the period as extended under section 42, as the case may be, the authority shall, F761[where requested by the majority of owners of the houses involved], comply with section 11 of the Roads Act, 1993, except that subsection (1)(b)(ii) of that section shall be disregarded.

(b) In complying with paragraph (a), the authority may apply any security given under section 34(4)(g) F763[, or a condition attached to a permission under section 9(4) of the Planning and Development (Housing) and Residential Tenancies Act 2016] for the satisfactory completion of the development in question.

F762[(2A) (a) Notwithstanding subsections (1) or (2), where a development referred to in subsection (1) has not been completed to the satisfaction of the planning authority and either—

- (i) enforcement proceedings have been commenced by the planning authority within F759[4 years] beginning on the expiration, as respects the permission authorising the development, of the appropriate period, or
- (ii) the planning authority considers that enforcement proceedings will not result in the satisfactory completion of the development by the developer,

the authority may in its absolute discretion, at any time after the expiration as respects the permission authorising the development of the appropriate period, where requested by a majority of the owners of the houses in question, initiate the procedures under section 11 of the Roads Act 1993.

(b) In exercising its discretion and initiating procedures under section 11 of the Roads Act 1993, the authority may apply any security given under section 34(4)(g) F763[, or a condition attached to a permission under section 9(4) of the Planning and Development (Housing) and Residential Tenancies Act 2016] for the satisfactory completion of the development in question.]

F764[(c) The initiation of procedures under section 11 of the Roads Act 1993 shall not preclude the planning authority concerned from pursuing, under the Planning and Development Acts 2000 to 2018 or otherwise, a developer for the costs incurred by that authority in respect of works undertaken on a development to enable it to be taken in charge by that authority.]

(3) (a) The planning authority may hold a plebiscite to ascertain F761[the wishes of the owners of the houses].

(b) The Minister may make or apply any regulations prescribing the procedure to be followed by the planning authority in ascertaining F761[the wishes of the owners of the houses].

F761[(4) (a) Where an order is made under section 11(1) of the Roads Act 1993 in compliance with subsection (1) or (2), the planning authority shall, in addition to the provisions of that section, take in charge—

- (i) (subject to paragraph (c)), any sewers, watermains or service connections within the attendant grounds of the development, and
- (ii) public open spaces or public car parks within the attendant grounds of the development.

(b) Where an order is made under section 11(1) of the Roads Act 1993 in compliance with subsection

(2A), the planning authority may, in addition to the provisions of that section take in charge—

- (i) (subject to paragraph (c)) some or all of the sewers, watermains or service connections within the attendant grounds of the development, and
- (ii) some or all of the public open spaces or public car parks within the attendant grounds of the development,

and may undertake,

- (I) any works which, in the opinion of the authority, are necessary for the completion of such sewers, watermains or service connections, public open spaces or public car parks within the attendant grounds of the development, or
- (II) any works as in the opinion of the authority, are necessary to make the development safe,

and may recover the costs of works referred to in clause (I) or (II) from the developer as a simple contract debt in a court of competent jurisdiction.

(c) A planning authority that is not a water services authority within the meaning of section 2 of the Act of 2007 shall not take in charge any sewers, watermains or service connections under paragraph (a)(i) or (b)(i), but shall request the relevant water services authority to do so.

(d) In paragraph (a)(ii), ‘public open spaces’ or ‘public car parks’ means open spaces or car parks to which the public have access whether as of right or by permission.

(e) In this subsection, ‘public open spaces’ means open spaces or car parks to which the public have access whether as of right or by permission.]

(5) Where a planning authority acts in compliance with this section, references in section 11 of the Roads Act, 1993, to a road authority shall be deemed to include references to a planning authority.

F761[(6) In this section ‘appropriate period’ has the meaning given to the term in section 40, as extended under section 42 or 42A as the case may be.]

F764[(7) This section applies to that part of a development for which permission is granted under section 9 of the Planning and Development (Housing) and Residential Tenancies Act 2016 that relates to the construction of houses and the provision of—

(a) new roads, open spaces or car parks, or

(b) sewers, water mains or service connections, within the meaning of the Water Services Act 2007, relating to such houses and references to ‘development’ in other provisions of this section shall be read accordingly.]

Section 11, Roads Act 1993 sets out the procedure for declaring a road to be a public road.

11.—(1) (a) A road authority may, by order, declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the road authority.

(b) Where a road authority proposes to declare a road to be a public road it shall—

(i) satisfy itself that the road is of general public utility,

(ii) consider the financial implications for the authority of the proposed declaration,

(iii) publish in one or more newspapers circulating in the area where the road which it is proposed to declare to be a public road is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such road may be inspected and stating that objections or representations may be made in writing to the road authority in relation to such declaration before a specified date (which shall be not less than two weeks after the end of the period for inspection),

(iv) consider any objections or representations made to it under *paragraph (iii)* and not withdrawn.

2) The consideration of objections or representations and the making of an order under *subsection (1)* shall be reserved functions.

3) The Minister may prescribe criteria for the declaration of roads to be public roads and a road authority shall comply with any such prescribed criteria when exercising its functions under this section

4) Every national road, regional road, motorway, busway and protected road shall be a public road and it shall not be necessary for a road authority to make an order under *subsection (1)* in relation to any such road.

5) A certificate of a road authority that a road is a public road shall be *prima facie* evidence thereof.

6) Every road which, immediately before the repeal of an enactment by this Act, was a public road shall be a public road.

7) Any road constructed or otherwise provided by a road authority after the commencement of this section shall, unless otherwise decided by such road authority, be a public road and it shall not be necessary for the authority to make an order under *subsection (1)* in relation to any such road.

NATIONAL POLICY

The February 2007 statement on Housing Policy “*Delivering Homes, Sustaining Communities*” from the Department of the Environment Heritage & Local Government, sets out a number of actions focused on building sustainable communities. These include building on the current suite of best practice guidance on urban planning, and developing new comprehensive planning guidelines on interrelated housing and planning matters to address emerging needs. The new guidelines include:

- A) Guidelines on Quality Housing for Sustainable Communities (March 2007);
- B) Guidelines for Planning Authorities on Design Standards for New Apartments (September 2007);
- C) Updated Residential Density Guidelines (*Draft Guidelines on Sustainable Residential Development in Urban Areas currently available for public consultation*); and
- D) Guidance in relation to a framework policy for the taking in charge of residential developments by planning authorities (February 2008).

Accordingly this document forms part of an overall policy on building sustainable communities and fulfils the commitment in “*Delivering Homes, Sustaining Communities*” outlined at D) above by setting out a framework for a comprehensive and proactive taking in charge policy by planning authorities.

GUIDANCE FROM DEPARTMENT OF THE ENVIRONMENT HERITAGE & LOCAL GOVERNMENT

Circular Letter PD 1/08 issued by the Department in February 2008 is a restatement and further development of a number of earlier circulars, which it replaces. The key elements of the new framework as set out in the circular are as follows:

Statement of the facilities to be taken in charge and of the maintenance services to be provided by the authority;

Measures to ensure the satisfactory completion of residential developments by developers;

Protocol to be followed in response to a request for taking in charge;

Planning conditions relating to management arrangements;

Dealing with requests in relation to older residential estates.

TAKING IN CHARGE POLICY – LOUTH COUNTY COUNCIL

LOUTH COUNTY DEVELOPMENT PLAN 2016 - 2021

Chapter 4 of the Plan deals with Residential and Community Facilities and Section 4.16 deals with Council Policy in relation to the Taking in Charge of Housing Estates. The full text of the Section is set out below:

4.16 Taking in Charge of Housing Estates

The Council is required under the provisions of *Section 180 of the Planning and Development Act, 2000 (as amended)* to take in charge developments (which includes the construction of 2 or more houses) where requested to do so by the person carrying out the development or by a majority of the owners or occupiers of the owners or occupiers of the houses involved. The council's policy and procedures in relation to taking in charge housing estates is set down in the policy document; ***Taking in Charge Policy/Release of Bonds for Completed Private Housing Developments Procedures for Taking in Charge of Recently Completed Housing Estates***. This Document is attached as Appendix 15, Volume 2 (b).

Policy

RES 36: To take in charge on request housing developments of two or more houses where the development has been completed to the satisfaction of the council in accordance with the Permission and any Conditions to which the permission is subject and having regards to the policy document *Procedures for Taking in Charge of Recently Completed Housing Estates*.

Appendix 15 - Procedures

Appendix 15 of the Plan details the Procedures for Taking in Charge of Recently Completed Housing Estates. This procedure document contains many of the elements relating to the process, particularly from a developer point of view.

This is followed by the document which sets out the procedures, which are broadly similar for Release of a Bond. The application forms for both Taking in Charge of Completed Estates and for Return of a Bond are attached at the end of this document.

TAKING IN CHARGE PROCEDURE

In order to be considered for taking in charge a development will have to be fully compliant with the conditions attached to the grant of planning permission, including all financial conditions and meet the technical requirements.

On receipt of an application for Taking in Charge from a Developer an initial inspection will be undertaken by Council Officials. Where the development is found to be not in compliance with the planning permission and the Developer fails to rectify the matter satisfactorily within a reasonable time period the file will be referred to Planning Enforcement for appropriate action if the Bond held is not sufficient to carry out the necessary works. The Taking in Charge application will be suspended pending the outcome of the enforcement action.

If the Bond held is sufficient then the Council will use same without recourse to Enforcement.

If Enforcement action is not possible/successful then the Council will prioritise the outstanding works and will use any available Bond monies to undertake the works to the value of the Bond held.

Each case will be examined on its merits and no undue delays will be allowed in having outstanding works completed.

In relation to older estates where the Developer is long gone/out of business/bankrupt/deceased or where the Developer has failed to make application to the Council to have the estate taken in charge and the period for taking enforcement action has expired and the residents themselves wish to apply to have the estate taken in charge the Council will arrange to carry out a plebiscite of the qualified electors resident in the estate, as per Section 180, Planning and Development Act 2000.

Certain private housing developments (e.g. apartments etc) will have a condition in the planning permission that a properly constituted management company be established for the purpose of maintaining the public lighting, roads, footpaths, parking areas, services and open spaces. The said public lighting, roads, footpaths etc shall be conveyed to the Management Company.

“Gated Developments” will not be taken in charge.

For all other private housing developments, the following elements of a development will be considered by the Council for taking in charge.

- Public roads and footpaths;
 - Unallocated surface parking areas;
 - Public lighting;
 - Fire services including fire hydrants;
 - Public water supply, foul and storm water drainage;
 - Wastewater treatment plants and associated buffer zones;
 - Potable water treatment plants and any associated protection zones;
 - Public Open Spaces
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- Playgrounds, where these are required by condition of a planning permission as facilities for public use.

Developers should note that liability for the above elements of a development shall remain with the developer until such time as they are taken in charge by the Council.

The maintenance services that will be provided by Louth County Council following the completion of the taking in charge process, subject to the necessary finance being made available, will include the following:

- Maintenance of all roads and footpaths, including unallocated street car parking;
- Maintenance of water mains and drainage services;
- Repair and reinstatement of roads, footpaths and landscaped areas resulting from repair and/or maintenance of underground services (water mains and drainage services) carried out by Louth County Council;
- Upkeep and maintenance of all public lighting installations including non-standard light fittings;
- Maintenance of public open spaces (that is, spaces to which the general public have access), not including grass cutting or maintenance of grass verges, incidental ornamental/landscaped areas, shrubberies or playgrounds, unless such playgrounds are required, as a facility which will be available to the general public, by the planning authority by way of planning condition;
- Upkeep and maintenance of all surfaces, fixed elements and rigid play equipment in play lots and playgrounds in cases where the playground or play lot was required by condition of a planning permission.

The Council will endeavor to implement a specified time frame for each stage of the taking in charge process, subject to the applicant having submitted a valid request (including the required documentation, drawings etc.)

(i) Within three weeks from receipt of the application for taking in charge, the Council will acknowledge receipt of the submission as outlined on the Application form.

(ii) Within three months of receipt of application for taking in charge or any required outstanding information, the Council will carry out a comprehensive inspection of the development or phase of development and notify the developer in writing of all outstanding issues associated with the satisfactory completion of the development.

(iii) The developer will within one month of receipt of details of outstanding issues from the Council, arrange for completion of the said works, and notify the Council when works are completed. If works cannot be carried out within that period the developer must notify the Council as to when the works will be completed.

(iv) The Council will, within two months of being notified of completion of the works at (iii), arrange for final inspection to determine the satisfactory completion of the development.

(v) Upon final inspection of the development or phase of the development and satisfactory completion of the works, the Council will initiate procedures to take the development in charge using the procedures outlined as per the Roads Act, 1993. Once the Development or phase of the development has been formally Declared a Public Road and adopted by elected members a release of that element of the security lodged to secure completion of the works will begin. All

reasonable efforts shall be utilised to ensure that formal procedures are completed for the taking in charge process with minimum delay.

(vi) The developer will vest in the authority (at no cost to the authority) the public areas, including open spaces, which have been designated for taking in charge.

(vii) When the planning authority is satisfied that the development has been completed to a satisfactory standard they will initiate the formal taking in charge procedure, which involves advertising the intention to take the development in charge and inviting submissions. Following the public display period a report will be prepared and taken to the Council for their approval.

The Council will exercise its discretion to refuse planning permission to Developers who have substantially failed to comply with a previous planning permission pursuant to Section 35 of the Planning & Development Act 2000, as amended.

Connection of Public Lights to the public Network:

The Council at their discretion will accept an application from a Developer to connect the street lighting to the public network if a formal Taking in Charge application is underway. The following conditions must be complied with:

- Developer to submit a layout plan of the development, at a scale of not less than 1:500, clearly showing the location of the street lights and minipillars that are requested to be taken in charge.
- The street/phase must be substantially completed and the majority of the houses must be occupied.
- The lighting system must be in accordance with the planning permission and be designed and operating to the relevant standard.
- Confirmation from the relevant Electricity Provider to be submitted that all running fees and connection charges have been paid.
- A RECI certificate must be provided.

Inspection Fees as set out in the attached application form must be paid, in advance, of additional and repeat inspections.
