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Managing and Resolving Unfinished Housing Developments

Guidance Manual



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



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Foreword

This document is evidence of the Government's commitment to address practical problems that have arisen from unfinished housing developments as a result of the prolonged economic downturn.

As Minister for Housing and Planning, I have recently received the report of an advisory group on unfinished housing developments. This manual is part of a range of measures being put in place to support the implementation of the recommendations of the Advisory Group.

This Manual takes account of around 50 submissions received by my Department and the Housing and Sustainable Communities Agency and I wish to record my appreciation for the efforts those persons and organisations took in preparing those submissions.

This Manual will also be reviewed to take account of ongoing experience in managing and resolving unfinished housing developments and the evolving regulatory and policy context.

A handwritten signature in black ink that reads "Willie Penrose". The signature is written in a cursive style and is positioned above a thin horizontal line.

Willie Penrose T.D.

Minister of State, Department of Environment, Community &
Local Government with responsibility for Housing & Planning

1 Introduction

1.1 Background

In October 2010, the Department of Community and Local Government published a National Housing Development Survey, of over 2,846 developments, which revealed that there were a significant number of housing developments where houses had been commenced but had not yet been fully completed. It is these, unfinished housing developments, which are the focus of this guidance document.

The key survey results from 2010 revealed the following:

- **2,846 developments were inspected**, of which building activity was ongoing on 376 (14%) sites at the time of the survey;
- **179,273** dwellings were estimated as being **approved for planning** on the sites above;
- **78,195** dwellings were **complete and occupied**;
- **23,250** dwellings were **complete and vacant**;
- 9,976 dwellings were near complete, (e.g. units were watertight but required fitting out or connection to services to ready them for sale); and
- **9,854** dwellings were at various **early stages of construction activity** from site clearance, construction of foundations up to wall plate level; and
- **58,025** dwellings had not been commenced.

The national distribution of housing developments included in the 2010 National Survey is outlined in Map 1 below. A breakdown of the distribution of complete and unoccupied dwellings by City and County Council areas is provided in Appendix 1.

The Department is currently in the process of funding the second National Housing Development Survey (2011) and it is intended to repeat the national survey at regular intervals so as to monitor planning, housing and construction activity patterns in addition to progress on the management and resolution of the issues that have arisen on unfinished housing developments¹.

High quality urban housing development is essential in delivering good quality of life, in meeting citizens' needs and in achieving many other aspects of Government policy in relation to sustainable communities, housing, planning, sustainable transport, energy efficiency and

¹ DECLG, National Housing Development Survey 2010 is available on the Department's website www.environ.ie; on completion the 2011 and subsequent surveys will be available on the Department's website.

environmental quality. However, the major contraction in housing construction activity has adversely affected the normal cycle in completing housing developments. New houses are taking much longer to sell, developments are taking much longer to complete and in many cases construction has slowed down considerably or stopped altogether with uncertainty as to the timescale for the eventual completion of works.

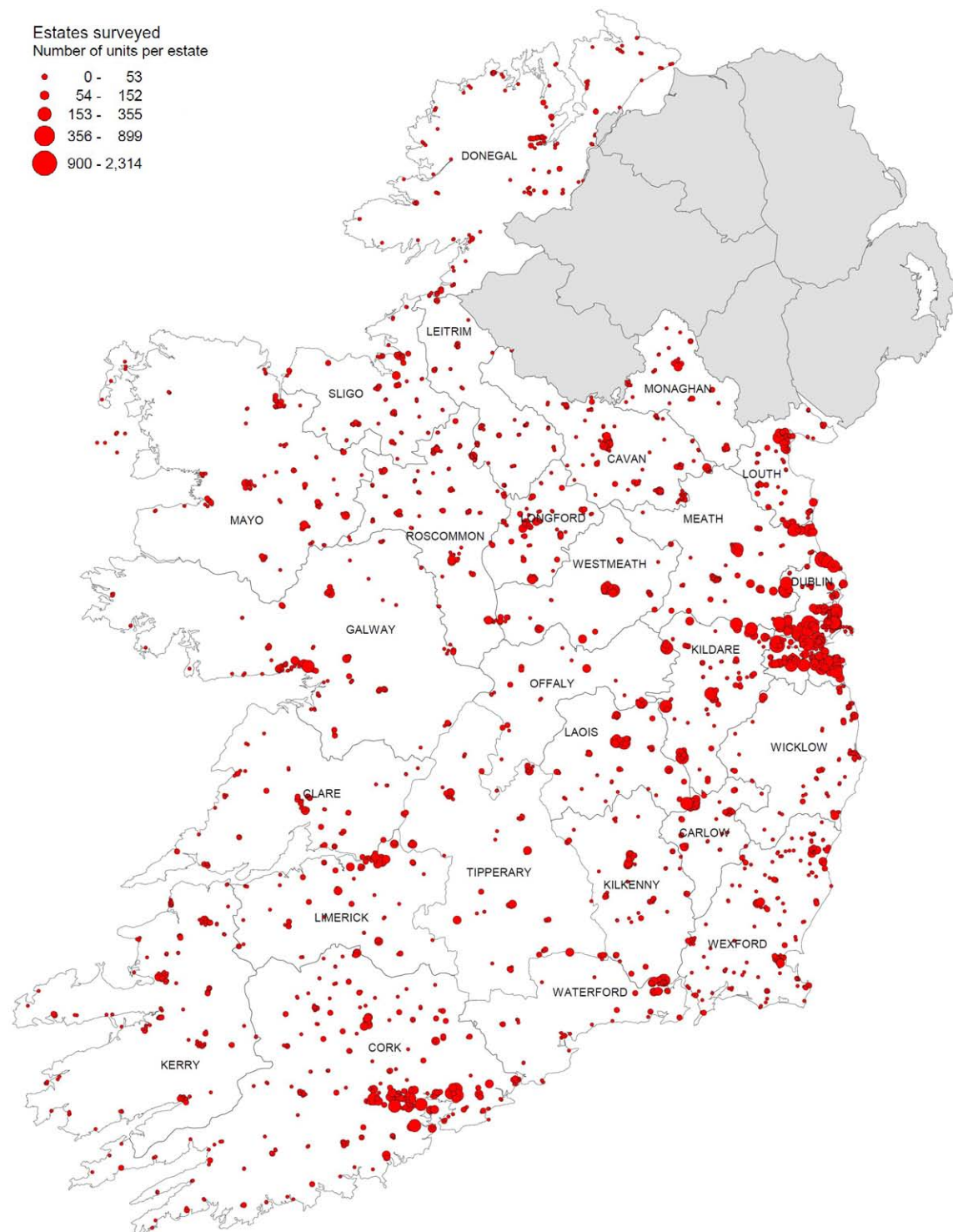
As a result, many developers have experienced severe financial difficulties or may have become insolvent with development sites now in the hands of financial institutions, leaving residents in such developments uncertain as to how or when the developments they are living in will be completed.

In addition, other practical issues have arisen including the financing of ongoing works, planning enforcement, building control compliance, ensuring the satisfactory provision of essential infrastructure and amenities as well as finding long-term uses for vacant properties.

This manual outlines good practice approaches that are to be adopted by local authorities, developers, financial institutions, state agencies and building professionals in managing and resolving unfinished housing developments.

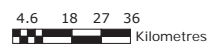


Map 1: National Distribution of Housing Developments



**National Housing Development Survey
Location of Surveyed Developments**

Note:
 1 Source: DoEHLG Survey 2010.
 2 Preliminary data, subject to validation corrections.



1.2 Aims of Guidance

The overall aim of this manual is to support the delivery of sustainable communities and government policy in relation to proper planning and sustainable development by supporting the restoration of confidence in the housing development sector and by identifying effective mechanisms for resolving issues that have arisen with particular unfinished housing developments.

More specifically, this manual aims to:

- (1) **Focus on new issues** that have arisen in developments with significant levels of complete/near complete and vacant and partly complete dwellings as opposed to the normal taking in charge and other processes that local authorities, developers and residents will be well familiar with in developments that are not in serious difficulties;
- (2) **Highlight the specific roles and responsibilities** that key stakeholders must play in managing and resolving developments that are in serious difficulties;
- (3) Outline the **principal mechanisms that are currently available** under existing legislation and practice to address unfinished housing developments;
- (4) Ultimately **restore confidence** in the housing market to the benefit of citizens, the various stakeholders to the construction process and the economy as a whole;
- (5) Secure **sustainable long term uses of vacant property** in line with existing Government policy and housing need as outlined in local authority housing action plans; and
- (6) **Resolve the on-site issues which are negatively impacting on the quality of life** of people living in uncompleted housing estates and the wider neighbourhood.

1.3 Current Efforts in Addressing Unfinished Housing Developments

This manual is focused on addressing difficulties that may arise in housing developments that have relatively high levels of complete and vacant, near complete and/or part-completed dwellings because such developments often experience problems in relation to:

- Developers discharging their obligations under Health and Safety and public safety legislation in ensuring that sites or portions of sites, that contain dwellings and that are in the process of being constructed, are adequately secured from unauthorised access;
- Developers complying with the requirements of planning, building control and other legislative codes (Derelict Sites Act, Litter Act) as they develop housing sites; and
- Property owners, including financial institutions (and NAMA) identifying longer-term plans for parts of the original development that have been completed but remain unoccupied or that have only been partly developed but now face an uncertain future.

The difficulties that may arise on housing construction sites can be very specific to that development and will depend on factors such as the extent to which a development is complete, the location of the development and the long-term prospects for housing in that area, taking into account the level of other unoccupied dwellings in the vicinity.

Many local authorities have specific sections and staff dealing with matters concerning unfinished housing developments and important functions carried out by local authorities include:

- **Maintaining a record of all such developments** within the local authority's area, monitoring key data such as planning permission, date of commencement, date of expiry of permission and maintenance of bonds for satisfactory completion of essential infrastructure;
- **Monitoring progress on the ground** as regards completion of development, compliance with various consents, primarily under planning and building control legislation;
- **Liaising with developers and residents** as regards arrangements for the satisfactory maintenance of developments, whether they will be taken in charge by the local authority or be maintained by a private management company as in the case of primarily apartment-type developments;
- **Initiating enforcement action** as regards developments that have not complied with the terms and conditions of the consents referred to above; and
- **Dealing with applications for the extension of duration of permission** and ultimate resolution of problem sites in conjunction with the developer or owner of sites.

1.4 Addressing Unfinished Housing Developments – New Challenges

The prolonged nature of the construction downturn poses new challenges in addressing issues related to the management and resolution of unfinished housing developments such as:

- **Extensive compliance** problems with developments in relation to planning, building control and other regulatory requirements, as new building regulations come into force;
- **Developers**, not being able to access the funding necessary to comply with planning and other requirements and/or complete developments;
- **Bonds and other securities** lodged with the relevant local authority to ensure the satisfactory completion of essential infrastructure and services expiring and/or being difficult to liquidate and/or renew;

- **Private maintenance arrangements** not working or being effective due to inadequate initial start-up capital, inherited deficiencies of the development and inadequate revenue stream due to under-occupation of developments;
- **Enforcement** of planning, building control and other requirements being difficult because of the difficulties in securing and executing court orders, especially given the issues above; and
- **Uncertain longer-term viability** of part occupied and/or complete developments including finding long-term uses for such developments that are sustainable in economic, social and environmental terms.

Notwithstanding the challenges above, where developers are still in place and/or where a financial institution acting in possession as charge-holder on a property has appointed a receiver, the issues above should be capable of being addressed over time.

However, where the developer has gone out of business and there is no charge-holder or financial institutions have yet to act in possession and appoint a receiver, it can be particularly difficult to progress issues that have arisen on such sites that are privately owned and that have effectively become abandoned housing developments.

The manual is not concerned with developments that are substantially complete and might only have minor outstanding completion issues that are normally addressed by the taking-in-charge or maintenance processes; neither does the manual focus on dwellings that are being occupied or dwellings that have not commenced and will not therefore be causing problems in relation to safety or visual impact issues.

1.5 Key Stakeholders and Their Roles

Management and resolution of the kinds of issues above that have arisen in relation to unfinished housing developments are very important in restoring confidence in the house building sector, in looking after the interests of residents and citizens and ensuring the creation of stable and sustainable communities.

Many different stakeholders have distinct roles to play in addressing unfinished housing developments and this document outlines the interdependencies between their roles and highlights good practice in integrating the work of the different stakeholders. The key stakeholders in addressing the issues raised by Unfinished Housing Developments are set out below:

Unfinished Housing Developments: Key Stakeholders

- Residents and local communities that are living in or who are affected by unfinished housing developments and their long-term resolution;
- Developers, including the owners of development sites and any management companies in place;
- Financial Institutions, including the National Asset Management Agency (NAMA) and receivers appointed to recover assets where a developer has experienced financial difficulties;
- Local Authorities, in their capacities as planning, housing, building control and water services authorities and representing local communities;
- The Department of the Environment, Community and Local Government, as the lead Department with responsibilities for the construction sector, planning, housing, building control and local government and agencies under the aegis of the Department which include the Housing and Sustainable Communities Agency and the Environmental Protection Agency;
- Other relevant Government Departments and Agencies such as the Health and Safety Authority in their role of securing safety, health and welfare of persons at work;
- Approved housing bodies;
- Professionals: The relevant construction, property, legal and development sectors.

The roles of the key stakeholders are as follows:

Residents and local communities living within or affected by unfinished housing developments need to be kept informed and involved in the process of devising and implementing any plans for the management and ultimate resolution of housing developments. This also includes estate management companies where such entities exist. Residents and the local community play an important role in bringing to the attention of the relevant statutory body the defects in the housing development into which they have purchased and which are not in the sphere of their control;

Developers and property owners must first and foremost ensure that their development sites, whether active or inactive, are safe and secure from unauthorised access and that they are working with other stakeholders to comply with planning, building control and other relevant consents to ensure the delivery of good quality and attractive developments that maximise return on investment; developers and property owners will also play a central role in the preparation of Site Resolution Plans (refer to Section 3.4)

Financial Institutions including Receivers will adopt a strictly commercial stance in assessing the best course of action to optimise value and, subject to their objective of maximising loan repayment and taking each individual situation on its merits, will cooperate with all other stakeholders in resolving unfinished housing developments in compliance with statutory consents and requirements;

NAMA will adopt a more holistic approach to the resolution of unfinished housing estates in accordance with their legislative role “to contribute to the social and economic development of the state²”;

Local Authorities will implement a range of powers available to them under planning, building control and other relevant legislation in an integrated way and will work proactively with developers, financial institutions and local communities in securing the satisfactory resolution of housing developments. They will continue to assess and monitor unfinished developments and are likely to play a key role in the coordination of Site Resolution Plans with NAMA/local authorities/Approved Housing Bodies.

The Department of the Environment, Community and Local Government and its agencies will provide overall leadership and direction in ensuring all the stakeholders outlined in this document are playing their part to the full in their efforts to resolve unfinished housing developments, including the consideration of any necessary amendments to the legislative, regulatory, policy or resourcing framework concerning this issue.

Other Government Departments and Agencies will work with the DECLG and the other stakeholders in operating an effective policy, regulatory and delivery framework in addressing the issues raised by unfinished housing developments;

Approved housing bodies will have a potential role as housing agencies in providing solutions for certain developments, in partnership with the DECLG and local authorities. With the proper financial framework in place, approved housing bodies have the potential to either acquire or lease units which will provide a resolution to the long term use of suitable developments that meet sustainability criteria;

Relevant Professions, adopting good practice approaches in relation to certification and compliance issues, will work proactively together in association with the other stakeholders utilising their professional skills and insight and will incorporate the approaches in this document into their professional working methods.

2 Section 2(b) (viii) National Asset Management Agency

2 Key Issues

Issues arising with developments that come within the scope of this document can be considered in terms of:

- Short-term Priority Issues;
- Medium-term Completion and Compliance Issues; and
- Long-term Site Resolution Issues.

2.1 Short-Term Priority Issues

The key short-term priority issues relate to:

- (1) Ensuring the **safety** and security of housing construction sites whether active or inactive;
- (2) Making sufficient ongoing provision of **bonds and securities** for the satisfactory completion of essential services such as roads, lighting, footpaths, piped services and amenity areas; and
- (3) Assisting local authorities in assessing and where appropriate securing developments/ units for social housing use.

With regard to (1) above, the most important short-term priority issue to respond to is to ensure sites are safe, meaning preventing of unauthorised access to unfinished or unoccupied parts of developments especially by minors whether they are active or inactive construction sites.

The above is first and foremost the responsibility of developers and/or the owners of unfinished housing developments.

The Safety, Health and Welfare at Work Act 2005 (2005 Act) is the legislative framework that addresses matters of safety, health and welfare at a place of work. The Health and Safety Authority (HSA) is the national body in Ireland with responsibility for securing safety, health and welfare of persons at work. The functions of the HSA are set out in section 34 of the 2005 Act, but the Act does not address or set out any specific roles or responsibilities for the HSA regarding public safety in general (as opposed to health and safety in the work-place).

The Safety Health and Welfare at Work (Construction) Regulations 2006 (2006 Construction Regulations) are the principal set of regulations that apply to construction sites/projects. Under the 2005 Act and 2006 Construction Regulations there are specific duty holders identified who are namely, Employers, Employees, Clients, Project Supervisors for Design Process, Project Supervisors for Construction Stage and Contractors. It is important to note

that these duty holders primarily have responsibilities where a “place of work” (under the 2005 Act) and a “project”/“construction work” (under the 2006 Construction Regulations) exist. Section 2 of the 2005 Act details the “definition of a place of work” and Regulation 2 of the 2006 Construction Regulations defines “construction work” and “project”.

The structural safety of unfinished developments can also be a short-term priority issue as partly constructed housing developments can become structurally unsound (e.g. gable walls left exposed to wind pressure may collapse). In this regard, the Local Government (Sanitary Services) Act 1964 places obligations on property owners and gives certain limited powers to local authorities in relation to dangerous places and dangerous structures to either require the owners of such properties to make them safe or for those authorities to step in, do the works and recover the costs of such works from the owners of the relevant properties.

With regard to (2) above, bonds and securities, housing developments will normally be approved on condition that the developer lodges with the planning authority an appropriate security, usually in the form of an insurance bond or in some limited cases a cash deposit which will only be returned when essential services and amenities have been provided in accordance with the terms and conditions of the planning permission.

However, as insurance bonds are usually issued for set periods of cover, ensuring that developments are adequately covered is an ongoing priority action for planning authorities.



2.2 Medium-Term Completion and Compliance Issues

Problematic developments may have significant compliance issues in relation to planning, building control and environmental requirements. Roads may not be finished properly, services may be defective or malfunctioning and there may be questions over compliance with building regulation requirements in relation to dwellings. The developer may or may not be in situ. As a result, it may be very difficult to execute sales as the necessary certificates of compliance with the planning code and/or building regulations cannot be issued. In turn, failure to complete sales affects cash flow, working capital provision and ultimately the progress of the development towards completion in accordance with the appropriate built standard and specifications.

As developments progress over the medium term (i.e. 2 - 3 years) and beyond, their success depends on effective working arrangements between developers, financial institutions, local authorities and building professionals in ensuring the completion of essential infrastructure and services. Such infrastructure includes:

- **Access** (roads, public lighting, footpaths, cycling facilities and parking),
- **Water services** (watermains, sewers, surface water drainage, and in some developments plant such as pumping stations and water/wastewater treatment plants),
- **Fire safety** (Hydrants, fire mains), and
- **Amenities** (open spaces, play areas, playgrounds) as well as other facilities such as childcare, sports facilities and neighbourhood shops that may be integrated into some larger multi-unit developments.

The Department's survey indicates that the primary area of difficulty in relation to satisfactory completion relates to roads, in terms of providing final wearing courses, open space in relation to levelling, seeding and landscaping, water services infrastructure and public lighting.

The maintenance arrangements can also be problematic where such maintenance was always intended to be carried out by the developer during construction phase with a private management company taking over upon completion. Such a hand-over may not have taken place for a variety of factors including the non-completion of the development and/or the failure to properly constitute and/or finance the management company.

Resolving medium-term completion and compliance issues is most problematic in developments where the developer faces severe financial difficulties or may have gone out of business, leaving part-completed developments and uncertainty as to how those issues will be resolved.

2.3 Long-Term Site Resolution Issues

The current economic downturn and the short- to medium-term economic outlook have seriously undermined confidence in the house building sector. Many development sites that were once considered economic propositions are now in difficulty, with only 14% of the sites surveyed by the Department indicating signs of construction activity at the time of the survey (May to September 2010). Notwithstanding the fact that the national level of new, complete but unoccupied dwellings is around the level of housing output achieved in 2009, there is concern about the viability of some housing developments that have run into serious financial difficulties.

In this regard, while the level of over-supply in the key metropolitan areas is not as extensive as might be otherwise expected and as liquidity in the banking sector improves and consumer confidence stabilises and returns, the prospects for resolving many unfinished housing developments in the main cities and urban areas will probably improve over the short to medium term.

However, for other part completed, part occupied developments in areas with a weaker housing market and proportionately higher levels of unoccupied new housing, the longer-term viability of such developments in their originally approved format may be in doubt.

In such cases, the key longer term issue is to identify a longer-term plan for the resolution of the development that may require the development to be rationalised or reconfigured, including finding new uses for elements of the original development that have failed to sell and remain vacant. This should include the use of vacant housing stock for community/ cultural/arts use. The opportunity to use unoccupied dwellings as holiday homes should also be explored.

In this regard, the preparation of Site Resolution Plans (SRP) by developers and/or financial institutions or new investors, under the guidance of the relevant local authority would appear to be an important step. In any event the SRP should be consistent with the relevant core strategies and housing strategies of the relevant statutory development plan or local area plan.

Section 3.4 and Appendix 3 provide more detail on Site Resolution Plans.

3 Key Steps

3.1 Roles and Responsibilities

Section 1.5 above outlined the key stakeholders in addressing unfinished housing developments and their various roles.

In taking the first steps at a local level, local authorities have a central and facilitating role in:

- (1) Establishing the appropriate organisational and communication framework within their structures in tackling the problems with unfinished housing developments at local level; and
- (2) Ascertaining the scale of the problem with unfinished housing developments in their area including especially the ranking of the order of priorities in tackling developments that will present differing grades of problems from the fairly minor to more serious problems concerning public safety and public health.

3.2 Establishing an Unfinished Housing Developments Team

Taking account of the above, a key initial step is for each of the 34 City and County Councils to build on existing work and processes and to put in place a Team on Unfinished Housing Developments, drawing together existing skilled staff in the relevant areas including planning and planning enforcement, building control, housing, infrastructure and environmental services and parks. The team above should report to a nominated senior officer on the management team who in turn would be responsible for updating the elected members and DECLG on progress and deliver the actions below.



Unfinished Housing Development Team: Key Responsibilities

- Maintaining an up-to-date register of housing developments that have been commenced across the area of the planning authority, building upon the Department's National Survey and future updates that are planned by the Department with the register recording essential planning data including, inter alia, ownership details, the expiry dates of securities and records of applications for the extension of duration of permissions for significant housing developments;
- Creating a Key Contact List on each development as regards the relevant developers and/or site owners – that may include financial institutions, their agents and any representative groupings of resident in situ;
- Providing a single point of contact for other key stakeholders engaging with the relevant local authority in addressing unfinished housing developments such as developers, financial institutions – particularly receivers appointed by those institutions and local residents and neighbouring communities.
- Undertaking regular inspections and liaising with key agencies such as the Health and Safety Authority regarding current development issues on specific sites;
- Prioritising action on specific developments under the headings below, taking into account the severity of issues that present on specific sites;
- Working pro-actively with developers and financial institutions in developing short, medium and longer term action plans on specific sites to resolve identified difficulties and enable the ultimate resolution of specific sites;
- Examining and determining the role of Approved Housing Bodies working in partnership to complete, manage, rent or acquire units in unfinished housing developments;
- Assessing the suitability of vacant estates and/or individual sites to be used for social housing and advising local authorities and/or approved housing bodies on how best to transfer these developments and/or units to social use;
- Implementing appropriate enforcement responses under the relevant codes in a co-ordinated and effective manner; and
- Facilitating the preparation of Site Resolution Plans (SRPs) and supporting their implementation.

The Department recognises that local authorities will have to establish a Team on Unfinished Housing Developments within current resources and financial constraints. Local authorities are encouraged to explore collaborative opportunities for a shared service approach to management /inspection of unfinished housing estates.

3.3 Register of Unfinished Housing Developments

The Department has established an extensive national database of unfinished housing developments and will work to update the survey on an annual basis and to share the database with local authorities.

The National Housing Development Survey provides a good template for the creation of a more detailed local authority register of housing developments. Additional details that planning authorities should add would normally include:

- The planning history and status of particular sites – especially where multiple permissions and changes of layout are concerned (See Appendix 2 for a useful checklist of key information to assemble for each developments);
- The current owners, developers distinguishing between
 - developers still in existence and present on site;
 - sites where a receiver has been appointed; or
 - sites where there is no known promoter or funder;
- The position as regards compliance with relevant planning, building control and other matters;
- Suitability of developments and or individual units for social use by local authorities and/or approved housing bodies; and
- Prioritisation of sites for action, particularly the identification of sites where, from the planning authority's perspective, it would like to see Site Resolution Plans come forward.

As regards determining the owners of a given site, where the developer is in financial difficulties or has gone out of business, the site may have passed into the control of a financial institution (that may or may not be an institution participating in NAMA) which may or may not have appointed a receiver. Local authorities have a number of sources that they can use in identifying which institutions are involved on a given site through

- (1) title searches with the Property Registration Authority,
- (2) enquires through the Irish Banking Federation,
- (3) enquiries through the Construction Industry Federation and
- (4) local knowledge.

Local authorities should also inform the Department of any updates that it should make to the national survey database. The register should then be the framework for organising and prioritising future actions, taking account of the focus of the Unfinished Housing Developments Team in the section above.

3.4 Site Resolution Plans

Many developments are capable of being resolved over time, even if their development will take place over a longer timeframe than that previously envisaged. Other developments will be more problematic for the reasons outlined in section 2.3 above.

For the latter developments mentioned above, those most problematic ones on the local authority register of unfinished housing developments, **developers and/or financial institutions should develop and agree a Site Resolution Plan (SRP)** with the relevant local authority's Unfinished Housing Developments Team. A Site Resolution Plan can be an effective mechanism to maximise the value of property related assets for such institutions, including in some cases NAMA.

Site Resolution Plans will normally be prepared either by:

- The developer, as part of a request for additional working capital to the developers funder; or
- A receiver appointed by a financial institution seeking to recover assets.

A Site Resolution Plan should set out a longer-term framework for the ultimate usage of a given site that represents a good and balanced outcome for any residents in a given housing development, the local authority, the developer and funder, based on proper business, economic and social appraisals.

The SRP should set out an agreed way forward in consolidating and/or finalising the development of part, or all, of the site in question, taking into account the relevant planning, housing, infrastructural and amenity issues and the concerns of any residents.

The SRP should also specifically address important planning (security for satisfactory completion of essential services and payment of outstanding development contributions) and building control (addressing any compliance issues) issues that may have built up with previous development on the site. Subsequent sections address these matters in more detail.

Once a SRP is put in place by the developer or receiver, the local authority should then ensure that it plays its part in supporting the implementation of the plan.

A Site Resolution Plan (SRP) should, inter alia, include:

- (1) The planning and development context;
- (2) An agreed assessment of the key issues that need to be resolved on each site, focusing especially on matters relating to the interests of any established residents on such developments;
- (3) A timescale for the resolution of the issues above;
- (4) A funding and delivery plan in the form of a basic cost/benefit analysis and/or business case assessment, linked to any options under (5) below;
- (5) Options for the reconfiguration of a particular development, subject to relevant planning or other consents, including revisions to the overall scale, layout and / or mix of house unit types, consolidation of development and perhaps the occupied dwellings including proposals for any lands not to be developed. The option of an Approved Housing Body acquiring or leasing units or in some cases finishing out estates should be considered as one of the options for resolution;
- (6) A framework for the evaluation of options in (5) and a preferred option; and
- (7) A community element of the SRP, which responds to the issues identified by any residents.

In relation to (1) above, evaluation of longer-term options for a given site within an SRP by developers and receivers needs to take account of the wider planning and economic development context, beyond the site being resolved and should seek out the views of local authorities in this context.

For example, through participation in the SRP process, local authorities working with knowledge of SRP's that are in place on other sites can ensure that new SRP's take account of local market issues, the scale of overhang of new unoccupied housing in an area and the working assumptions from other SRP's.

The SRP should also identify if there is any role for an approved housing body to engage in the future long-term use of the development in terms of providing housing through leasing or acquisition, as management service providers, completing developments or providing community facilities. The matters outlined above could provide longer-term options for certain unfinished housing developments.

In drawing up SRP's by developers and receivers, there are also long-term benefits in maximising input from any residents in the relevant development and wider communities in neighbouring areas that may be affected by the development, particularly where the reconfiguration of the development is being considered.

3.5 Engagement with Local Residents

Engagement with local residents and communities can identify new partnership models in managing, maintaining and resolving unfinished housing developments, including finding new uses for vacant elements of developments. Such arrangements might include developer/local authority/community partnerships and the involvement of community finance agencies such as credit unions.

Proposed engagement process:

- A single point of contact within the Local Authority is established to make contact with Residents.
- Residents to form a Residents Association and nominate representatives to enable this process.
- Residents to compile a list of priorities for issues to be dealt with in their particular estate.
- Regular meetings to be held between Residents/Local Authority and Developer/Receiver to provide status reports on outstanding issues.

Tangible outcomes from such a process might include the renting of vacant properties for community development, education and training purposes; community led physical works; and the improvement of amenity areas or the establishment of community management teams.

Therefore, developers and receivers drawing up SRP's have much to gain from seeking out the views of any residents in and neighbouring communities around the relevant development and examining what practical ways local communities can participate in their preparation.

Local authorities should also consider how they may be able to assist community participation in the process of preparing SRP's, by devoting a specific part of their websites to providing information to the general public about the establishment and work of Unfinished Housing Development Teams and a single point of contact for local communities to input to the work of the Teams.

Appendices 1 and 2 set out methodologies that should be useful to developers in preparing a Site Resolution Plan and includes a reference to a site that is being successfully remediated using methodologies that are consistent with the overall approach in this document.

4 Good Practice Responses to Short and Medium-Term Issues

4.1 Public Safety

Given the currently longer timescale for the completion of housing development sites where work on sites may be temporarily suspended or even halted altogether, it is important that local authorities, the Health and Safety Authority and members of the general public are responsive in alerting property owners to their statutory obligations as regards preventing unauthorised access to uncompleted parts of housing developments and not to become dangerous places and/or structures and for property owners to monitor their developments as well. In some cases, it may be advisable for property owners to take certain steps to make their developments safe such as:

- Protecting and covering open trenches, foundations and basement areas; and
- Taking down vulnerable or exposed gable walls.

Notwithstanding the developers' and/or site owners' primary obligation in relation to health and safety, concerns may arise through enquiries from the general public and/or the work of the HSA and local authority as regard the provision of reasonable levels of safety on unfinished housing developments. In this regard, the following protocol will be operated by the relevant stakeholders.



Recommended Protocol for Addressing Health and Safety Issues

- The first point of contact should be the Health and Safety Authority which operates an information service on Lo-call Number 1890 289 389 that can be used to report sites that may be in breach of Health and Safety at Work legislation. In a case where a complaint is made and where a site is determined by the HSA to come under the scope of the relevant legislation, the HSA will act under its powers to address any relevant concerns that have been reported. It is also recommended that the relevant local authority is notified at the same time.
- Where a construction site is deemed by the HSA to no longer represent a place or work and therefore not covered by Health and Safety at Work legislation, it will forward complaints received regarding such sites to the relevant local authority and where such complaints are made by a local authority, will confirm that, until the workplace status of the site alters, the relevant local authority may take up the matter with the relevant owners of the site under its powers below.
- Where certain local authorities, on the basis of their own information or complaints from the public, believe that a site has become a dangerous place and/or contains dangerous structures within the meaning of the Local Government (Sanitary Services) Act 1964, they may, as they consider appropriate, inform the owners of the property concerned to take such steps as are necessary to make that place and/or structures safe.
- Developers, financial institutions and property owners should be highly vigilant in ensuring that their lands and structures are not dangerous within the meaning of the legislation above and that they co-operate fully with the relevant local authorities in addressing any concerns of such authorities including carrying out works to make places and/or structures safe.
- Where the developer or site owner is not readily identifiable or responsive to the issuing of notices under the legislation above, the relevant local authority may, as it thinks fit, go onto land, carry out any necessary works and recover the costs of such works as a charge on the relevant property.

The step-by-step approach above and summarised in Appendix 3 will be followed by all the key stakeholders in addressing any public safety concerns that may arise on unfinished housing developments.

4.2 Bonds and Securities

A second immediate priority with regard to unfinished housing developments is to ensure that the planning authority monitors the housing developments in its area to ensure that they are covered by an up-to-date bond or other security such as a cash deposit, for the satisfactory completion of essential services and amenities.

The register of unfinished housing developments referred to earlier should contain details of the arrangements for securities including:

- (1) The type of security;
- (2) The value of the security;
- (3) The period of cover for the security; and
- (4) An assessment of the adequacy of the security, taking account of any likely deficiencies with essential infrastructure and amenities on sites.

Keeping securities in place for unfinished housing developments is a key priority action for all stakeholders and in this regard, planning authorities are advised to maintain contact with the developer and/or owner of sites to ensure insofar as possible that proper securities are maintained and renewed and to take enforcement action, as appropriate, where difficulties arise and avoiding situations where a developer may be in financial difficulties and securities have been allowed to lapse.

Section 28(2) of the Planning and Development (Amendment) Act 2010 contains a new provision allowing planning authorities to attach conditions requiring the provision of adequate security for the satisfactory completion of essential services where those planning authorities are considering applications for permission to extend the duration of planning permissions.

Recognising the current difficulties in raising bond-type securities, it is also good practice for local authorities and developers to consider the full range of mechanisms available. Such mechanisms might include:

- Cash deposits;
- Insurance Bond; and where neither of the above are available;
- Title over specified parts of the development (e.g. in the case of part-completed developments completed but vacant dwelling units) that would be returned, subject to verification that essential services and amenities have been provided in compliance with the terms and conditions of the relevant planning permission.

In the light of current reported difficulties in raising new bond type securities for new investors or developers taking over problematic developments, they should consider the use of innovative security mechanisms such as those described in the last point above.

In certain limited cases where a developer is in financial difficulties, where significant compliance issues have built up in relation to the provision of essential public infrastructure within the development (roads, open spaces etc) and where a developer has paid forward on planning contributions towards the provision of public infrastructure, it is considered appropriate for planning authorities to consider the use of those cash contributions to address serious difficulties that may have arisen with the provision of public infrastructure within that development.

DECLG will monitor the operation of the provisions outlined in this part of the Manual.

4.3 Building Control

In relation to building control matters, good practice responses for developers and local authorities fall into two categories, namely;

- (1) Developers addressing issues that may have arisen in relation to damage to vacant or part-completed dwellings; and
- (2) Local authorities and developers implementing procedures for dealing with building control certification issues.

4.3.1 Damage to Vacant or Part-Completed Dwellings

Three key stages of construction referred to in the Department's survey can give rise to building control issues:

- Dwellings that are complete but vacant (23,250)
- Dwellings that are nearly finished (9,976)
- Dwellings that are at early stages of construction (9,854)

From a building standards perspective, dwellings and structures in the situations above are vulnerable, to varying degrees, to damage from the elements (e.g. wind, rain, low temperature cycles, sunlight etc.) and other sources of damage (vermin, infestations etc.).

Complete but vacant units are susceptible to some damage, including mould growth over time, humidity levels deforming non-hardwood timbers (or timber-based products e.g. mdf skirting, window boards etc.), freezing conditions that could affect water pipes if water is connected etc. However, in general, these should result in relatively minor and reversible problems.

The nearly finished units are more vulnerable, depending on the degree to which they are actually finished. The main areas of concern in these situations are the possibility of structural weakness, moisture damage, structural deterioration and material degradation.

- **Structural defects** may occur where elements have not been tied in place, e.g. gable walls tied at floor and roof level, walls not buttressed, roofs not tied down, insufficient dead load to counteract the effects of wind loading on exposed roofs etc.
- **Moisture damage** may occur where materials intended to be internal and protected from elements are left exposed to rain. This can lead to superficial material degradation (finished timber, e.g. doors, architraves, skirting) but more seriously structural deterioration, e.g. where moisture levels in timber (or timber-based products) exceed limits and as a result lose strength.
- **Mould growth** and condensation can occur as a result of poor ventilation, humidity and relatively cold surfaces.
- **Material degradation** can also occur from exposure to UV light on materials that are not intended to be exposed e.g. sarking felt, however works can be carried out to limit and reverse such damage.
- **Infestation** is a risk at this stage also where service penetrations are not sealed or connected.

It is good practice that developers, their agents or financial institutions acting in possession work to identify any issues that may arise under the headings above utilising the approaches outlined below.

In particular, units at an early stage of construction are potentially exposed to the same damage as those nearly finished depending on the stage at which construction ceased. However, potential for damage is likely to be minimised due to the fact that less finished materials will be in place in such dwellings.

In terms of a short-term response, those units that are most vulnerable are those nearly complete. These should be surveyed by a competent person working to the developer (Chartered Engineer, Architect or similar professional) to assess the minimum work required to protect them until such time as they can be finished out.

As part of a longer-term strategy, all unfinished or vacant units should be technically assessed by a competent person working to the developer (engineer, architect or similar) to protect units and to set out any remediation work necessary to protect units from further damage, or, if required, plan works to complete units.

Units should be dealt with on a case by case basis as each will present unique technical challenges driven by factors such as geographical location (e.g. exposed western seaboard), micro-climate (including aspect and orientation), level of completeness, type of structure/ construction (e.g. masonry construction, framed construction), types of material, etc.

4.3.2 Compliance with Building Regulations³

In relation to compliance with the Building Regulations, there are a number of issues in relation to:

- Applicable Building Regulations for checking compliance; and
- Applicable Building Regulations to complete units.

Firstly, with regard to the question concerning the applicable Building Regulations for checking compliance, the competent person referred to above should establish key dates for the works including;

- date of applying for planning permission,
- date of commencement, and
- date of substantial completion (in certain circumstances).

From the details above, the competent person should be able to confirm which combination of revisions of each of the 12 Parts (of the Building Regulations) apply. For example:

- Part L 2008 - Dwellings - applies to work which commenced on or after 1st July 2008;
- Part L 2005 – applies to work which commenced on or before 30th June 2008; and
- Part L 2005 – applies to work which applied for planning permission on or before 30th June 2008 and was substantially complete by 30th June 2009.

Definitive checks on compliance can be carried out on all completed units. For those that are nearly complete or are in the early stages of construction, an interim inspection can be carried out and existing and/or emerging issues can be identified and noted.

3 Including Fire Certification

Any remedial works necessary to bring the units into compliance should be carried out by the relevant developer. In accordance with the Building Control Act 1990-1997, responsibility for compliance with the Building Regulations is with the builder and the owner.

Secondly, with regard to ascertaining the applicable Building Regulations to complete units, when construction restarts on units, the applicable Building Regulations must be established. The dates as mentioned above are critical in this process.

Those units that have not yet commenced are likely to be subject to forthcoming revisions of Building Regulations, for example: Draft Part L 2010 – Dwellings – Public Consultation Proposal - to apply to dwellings commencing on or after 20th Dec 2011. Such forthcoming revisions will be likely to require re-designing of units to meet the requirements of the Building Regulations.

The demolition and re-building of units would also affect the applicability of Building Regulations.

Section 4 of the Building Control Acts 1990-2007 provides for the dispensation or relaxation of the Building Regulations, whereby a local building control authority may, if it considers it reasonable having regard to all the circumstances of the case and subject to such conditions as it sees fit, grant a dispensation from, or relaxation of, any requirement of the Building Regulations in respect of buildings or works which are situated in their functional area and are the subject of an application in the prescribed form and fee.

It is especially important that Site Resolution Plans address any building control issues that arise under the headings above and local authorities in their capacity as building control authorities can consider for themselves their scope to pro-actively support SRP's by applying any dispensations or relaxations to the regulations given the circumstances on specific sites.

4.4 Environmental Protection

Some housing developments that took place in recent times included the provision of site-specific environmental infrastructure such as water abstraction, treatment and distribution systems, wastewater treatment systems and in some cases communal waste disposal facilities.

Given the essential nature of such services, their satisfactory completion, operation and maintenance is especially important from a public health and water quality perspective.

The Environmental Protection Agency is in receipt of 19 current complaints as regards private on-site wastewater treatment systems for multi-unit housing developments and the issues typically arising concern matters such as:

- Defects with system design and operation;
- Overflows, leaks, ponding of effluent and odours; and
- Alleged water pollution.

Again, complaints such as the types of issues mentioned above, should be logged by planning authorities as part of the register of unfinished housing developments and pursued by them and/or the EPA against the relevant developer and/or site owner under water pollution, public health and environmental protection legislation.



5 Tackling the Issues: Legislative Mechanisms

5.1 General

This section of the document is especially relevant to local authorities and broadly restates the extensive range of existing legislative provisions that are applicable to ensuring the satisfactory resolution of development sites in general and housing construction sites specifically, such as:

- Planning;
- Building Control;
- Environmental Protection;
- Derelict Sites; and
- Litter.

It is good practice for all the stakeholders mentioned in Section 1 to work together proactively to avoid the need for lengthy, complex and often resource intensive enforcement processes.

The Site Resolution Plan (SRP) should be a mechanism for the identification of negotiated solutions to difficult sites.

However, local authorities should not underestimate the influence they can bring to bear on the process of resolving unfinished housing developments through coordinated use of the powers available to them under the various codes above and it is in the interests of developers, their agents and financial institutions acting in possession to co-operate with such efforts in addressing compliance matters.

The following paragraphs set out the range of actions that may be taken by local authorities.

5.2 Planning Legislation

Relevant powers under planning legislation in dealing with unfinished housing developments relate to:

- Planning enforcement;
- Calling in of securities;
- Taking developments in charge; and
- Extending the duration of planning permissions.

5.2.1 Enforcement action under the Planning and Development Acts 2000 -2010

The primary responsibility for compliance with the terms and conditions of planning permissions rests with the developer and developments which have not been completed in accordance with the terms and conditions of a planning permission may represent unauthorised development.

Where the planning authority have been unsuccessful in getting the developer to complete work through normal day-to-day interaction, it should consider whether enforcement action would succeed in securing such compliance harnessing the substantial range of enforcement powers under the Planning and Development Act 2000, including the issuing of:

- (1) Warning letters;
- (2) Enforcement notices;
- (3) Legal proceedings at district and circuit court level; and
- (4) Initiation of injunctive proceedings.

The decision as to whether to take enforcement proceedings will be influenced by a range of factors including legislative requirements, the seriousness of the issue, availability or alternative dispute resolution mechanisms and the planning status of the site.

5.2.2 Calling in of bonds and completion of works

Where enforcement action is not feasible or has been unsuccessful, planning authorities should consider calling in or liquidating the relevant security or bond in order to provide the necessary resources to do the works itself. The Department is aware of the practical difficulties that can arise in liquidating or cashing in bonds and will work with the representatives of the relevant financial institutions in ensuring that such processes are conducted fairly and efficiently.

5.2.3 Taking in charge

In relation to estates which have not have been completed to the satisfaction of the planning authority and where enforcement proceedings have not been commenced within the relevant period, section 180 of the Planning and Development Act 2000, as amended, provides that the planning authority shall, if requested to do so by the majority of the owners of the houses involved, as defined above, (but not the developer) initiate the taking-in-charge procedures set out in section 180 as amended.

In these circumstances, the provision in section 11 of the Roads Act requiring the authority to consider the financial implications of taking a road in charge shall be disregarded. This requirement only arises where the planning authority have not taken enforcement action in the 7 years following the expiration of the planning permission.

Section 59 of the Planning and Development (Amendment Act) 2010 amends section 180 of the Planning Act 2000 to enable the taking in charge of portions of developments, recognising that, while earlier phases of some housing developments may be complete, the completion of subsequent phases may be in doubt.

Under the revised taking-in-charge arrangements, planning authorities are also empowered to undertake any works which, in the opinion of the authority, are necessary for the completion of water services, public open spaces and car parks or which are necessary to make the development safe and to recover the costs of such works from the developer as a simple contract debt.

5.2.4 Permission to Extend the Duration of Planning Permission

Section 28 of the Planning and Development (Amendment) Act 2010 amends Section 42 of the Planning Act 2000 in relation to mechanisms to extend the duration of permissions.

Essentially, there are now two separate mechanisms to extend the duration of permissions that apply in the following circumstances:

- (1) **Developments that have commenced**, have had substantial works completed and have sought permission to extend the duration of the permission before that permission expired and where the planning authority is satisfied that the development will be completed within a reasonable timeframe⁴ (Section 42(1)(a)); and

⁴ The applicant must specify the period within which the development will be completed and the authority must satisfy itself that the development will be completed within a reasonable time.

(2) **Developments that did not commence** because of considerations of a commercial, economic or technical nature beyond the control of the applicant which militated against either the commencement of development or the completion of substantial works and where the planning authority is satisfied as to the above and that there have been no significant changes in Ministerial Planning Guidelines, Regional Planning Guidelines, or the relevant development plan and that the requirements of the EU EIA and Habitats Directives were complied with before permission was first granted (Section 42(1)(b)).

In both cases, it is the responsibility of the planning authority to satisfy itself as to the applicability of the relevant mechanism and compliance with the criteria stated in the legislation.

Where permissions are extended, they should be factored into the relevant core strategies and housing strategies where statutory development plans or local area plans are being varied or reviewed.

Where a development is ultimately not completed in accordance with the terms of its planning permission and no attempts are made to extend the duration of the permission in line with the mechanisms outlined above, then that development will not be in accordance with the terms of the original permission and any developers or promoters taking the site forward in the future will have to resolve any non-compliance issues by way of making an application to the relevant planning authority for a new or revised planning permission.

5.2.5 Part V Agreements

Part V of the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2002 established the provision of social and affordable housing as an objective of planning legislation.

Developers of residential development are required to;

- (a) Cede land at its "existing use" value to the planning authority for the purposes of social and affordable housing; or
- (b) Make alternative provision in equivalent monetary terms to the value of the land which the planning authority would otherwise have received.

Under section 96 of the 2000 Act (as amended), it is mandatory to impose a condition on certain residential planning permissions⁵ which require the applicant for planning permission, or any other person with an interest in the land, to enter into an “agreement” with a planning authority for the provision of social and affordable land.

Where a development has commenced but has not been completed in accordance with the terms of the planning permission the onus is on the developer or promoter taking the site forward to ensure that the “agreement” in relation to Part V is honoured. This may result in the renegotiation of Part V “agreements” as part of a revised planning application.

5.2.7 Section 47 Agreements

Under section 47 of the Planning and Development Act 2000 a planning authority may enter into agreement with any person interested in the land in its area for the purpose of restricting or regulating the development or use of the land either permanently or during such period as may be specified by the agreement. It may be appropriate to make an SRP subject to such an agreement.

5.2.8 Universal Design

Universal Design is the process that results in the creation of an urban environment that can be used by all people, regardless of their age, size, disability or ability. Planning authorities should have regard to the National Disability Authority “*Building for Everyone Booklet 9 – Planning*” relation to universal design as part of their assessment of SRPs. The Irish Wheelchair Associations “Accessibility Guidelines Checklist”⁶ should also be consulted.

5.3 Building Control⁷

In accordance with the Building Control Act 1990-1997, responsibility for compliance with the Building Regulations lies with the builder and the property owner.

Under the 1990 Act, where the construction of any building or the carrying out of any works to which building regulations apply has commenced or has been completed or there is any material change in the use of buildings, and the building or works are not designed or in conformity with building regulations, and the failure to comply with building regulations is not such a failure in relation to which the building control authority would be prepared to grant a dispensation or relaxation, the building control authority may serve an enforcement notice on persons carrying out the works and on the owners of the building.

5 For exemptions to Part V see section 95(2) of the 2000 Act (as amended).

6 <http://www.iwa.ie/Docs/publications/IWA-Access-Guidelines2010-Edition-2.pdf>

7 Including Fire Certification

5.4 Environmental Protection

Local authorities have extensive powers available to them under the 1977 and 1990 Water Pollution Acts to ensure that, for example, any waste water treatment and disposal facilities on sites do not cause water pollution and the operators and owners of such facilities are obliged to comply with such requirements.

5.5 Derelict Sites Act 1990

A local authority is empowered under the provisions of the Derelict Sites Act 1990 to direct, by way of a notice, the owner or occupier of land which is or may become derelict to take such measures as the authority or the minister consider necessary to prevent it from becoming or continuing to be a derelict site⁸. The carrying out of any works specified in the notice is exempted development⁹.

The legal definition of derelict site is defined as -

“any land which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

- (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or*
- (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or*
- (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred statute or by common law”¹⁰.*

Three key elements of the Derelict Sites legislation can be helpful in dealing with unfinished housing developments.

- Firstly, local authorities can serve a Schedule of Dilapidations on the developer and/or financial institution acting in possession, giving a formal warning that their asset may be at risk if they do not take action;
- Secondly, assuming a site can be legally declared derelict, the remaining undeveloped land and any houses could be made subject to an annual levy; and
- Thirdly, under the legislation there are powers of acquisition to purchase assets at prices that reflect reality on the ground with the cost of works undertaken by the local authority and accrual of any levies reducing the cost of acquisition.

⁸ Section 11 of the Derelict Sites Act 1990.

⁹ Section 11 (6) of the Derelict Sites Act 1990.

¹⁰ Section 3 of the Derelict Sites Act 1990.

5.6 Litter Act 1997 - 2003

One of the features of abandoned estates is that over time, their visual appearance can tend to deteriorate. Site hoarding and fencing may become weather beaten whilst fly tipping and petty vandalism, illegal encampments and anti-social behaviour can become prevalent.

In this regard, local authorities should consider the scope to apply the provisions of the Litter Pollution Act 1997 – 2003. The definition of litter is quite wide and extends beyond casual pieces of paper, cigarette ends to anything large or small which is, or is likely to become, unsightly.

The Act clearly sets out the statutory responsibility of local authorities and land owners. Each local authority is required to adopt a Litter Management Plan (LMP). The legislation prescribes the specific minimum components of a LMP, requiring information on litter prevention and control activities and the setting of appropriate objectives and targets for the three-year period covered by the Plan.

Under the Litter Pollution Act landowners/occupiers have a responsibility to:

- (i) keep land which is in or visible from a public place free of litter; and
- (ii) keep free of litter land along a public road, in a speed limit area, including footpaths, pavements and grass verges.

Anyone convicted of a litter offence may also be required by the Court to pay local authority's costs incurred in investigating the offence and bringing the prosecution.

5.7 Local Government (Sanitary Services) Act 1964

Section 4.1 previously outlined a protocol agreed between HSA, DECLG and local authorities as regards addressing any safety concerns that may arise in relation to unfinished housing developments, including the use of local authority powers under the Act above in relation to addressing concerns as regards places and/or structures becoming dangerous to members of the public.

5.8 Use of Statutory Powers

The short summary of powers available to local authorities under the various legislative powers above highlights the extensive range of mechanisms available and the considerable influence that could be brought to bear on particularly difficult sites, where developers and/or owners of sites are not co-operating with the local authority's efforts to secure a resolution of a specific site.

It is good practice that developers and site owners, who may include financial institutions acting in possession, work pro-actively with local authorities in avoiding the use of legislative mechanisms and where such co-operation is not forthcoming, for local authorities to use their powers in a co-ordinated fashion prioritising the most difficult sites.



6 Funding of Works

6.1 General

The carrying out of works to resolve unfinished housing developments in difficult economic circumstances is dependent on all of the stakeholders outlined in Section 1 playing their full part in supporting the resolution of sites and the establishment of sufficient funding streams.

In particular:

- (1) The developers and their financial institutions must play their part in honouring their statutory obligations in relation to compliance with essential legislative requirements, including those outlined in Section 5 of this document, and in turn;
- (2) Co-operation by developers and their financial institutions with the relevant requirements will enable local authorities to play a constructive role in agreeing Site Resolution Plans and approving development in their various planning, building control and other roles supported by;
- (3) National level policy and regulatory frameworks which will be kept under constant review by the Department and other relevant national-level departments and agencies.

The provision of working capital by lending institutions to ensure the discharge of statutory obligations is a particularly important issue and will maximise the long-term value of assets to the benefit of those institutions because developments that are in breach of statutory obligations will be difficult to sell and may have instead to be heavily discounted.

6.2 Public Safety Initiative

The Department has set aside a €5m fund to assist local authorities in dealing with immediate safety issues and works to improve the living conditions for existing residents in unfinished housing estates where there is no construction activity on the site, efforts to contact the developer or site owner having been unsuccessful, no receiver has been appointed and serious public safety issues are present. Engagement between the local authorities and DECLG is ongoing in this regard.

Any costs incurred by local authorities in preparing and implementing an initial site response must be recouped from any future developer or funder of the development.

6.3 Financial Obligations under Planning Legislation

Good practice approaches in enabling developers to meet their obligations to planning authorities in relation to bonds and development contributions are being developed around the country in response to the currently challenging economic context.

In the case of bonds, the option of lodging the title of nominated housing units in a part-completed development as a security has been implemented in one local authority area.

In terms of cash contributions paid forward by developers towards the provision of public infrastructure, planning authorities may use such contributions to address serious deficiencies in public infrastructure within the development.



7 Unfinished Housing Developments and Forward Planning

7.1 Vacant and Unfinished Housing and Core Strategies

The extent and pattern of unused planning permissions or incomplete housing developments is also of relevance to forward planning.

Such information should also inform the review of development plans and local area plans and in particular the calculation of estimates of future development requirements under the core strategy provisions of Section 7 of the Planning and Development (Amendment) Act 2010.

Planning authorities should use the Department's national survey results as baseline information in relation to the preparation of "core strategies" and in line with the 2007 Planning Guidelines on Development Plans. The Guidelines require planning authorities to ensure that they zone enough land to meet anticipated housing needs over a nine-year period.

Planning authorities should ensure that the decisions they take in identifying lands for future development encourage and do not undermine the take-up of any existing over supply in the first instance.

Moreover, where unfinished housing developments are a significant planning issue in locations covered by specific development plans and/or local area plans, the relevant plan might include for example:

- Objectives concerning the resolution of such developments;
- Policies for evaluation and prioritisation of unfinished residential development; and
- Specific development management objectives to support flexibility in reconfiguring developments – for example in relation to open space, roads and circulation requirements, etc.

7.2 Vacant and Unfinished Housing and Housing Strategies

In addition to the Core Strategy requirement, development plans are required to set out a strategy for the purposes of ensuring that the housing needs of the existing and future population of the area are provided for.

The inclusion of the Housing Strategy in development plans works in tandem with the overall assessment of future population and development lands requirement in the Core Strategy and goes on to;

- (i) Identify housing needs across different tenure types (private, affordable, social).
- (ii) Specify requirements in relation to making provision for social and affordable housing in future housing development.

Again, as in Core Strategies, the availability of up-to-date data on vacant and part-completed new housing will be an important input into future housing strategies.



Appendix 1

Distribution (September 2010) of Complete and Unoccupied Dwellings by City and County Council Areas

Carlow	327	Longford	627
Cavan	802	Louth	581
Clare	662	Mayo	498
Cork City	419	Meath	809
Cork County	2681	Monaghan	297
DL Rathdown	1477	Offaly	220
Donegal	664	Roscommon	624
Dublin City	2536	Sligo	690
Fingal	1517	South Dublin	1286
Galway City	260	Tipperary North	376
Galway County	629	Tipperary South	267
Kerry	675	Waterford City	53
Kildare	563	Waterford County	144
Kilkenny	483	Westmeath	532
Laois	636	Wexford	692
Leitrim	506	Wicklow	296
Limerick City	109	STATE	23250
Limerick County	312	Dublin City / County	6816

Appendix 2

Checklist for Review of Unfinished Housing Developments Leading up to Preparation of Site Resolution Plans

Initial Overview

- (1) A brief description of the development as envisaged, including a breakdown of accommodation type, tenure and facilities, including residential accommodation to be delivered under Part V.
- (2) The current position with regard to the development on site including the amount of dwellings commenced, completed, completed and occupied, incomplete or undeveloped – on a tenure and unit type basis.
- (3) Arrangements with regard to any management company, its status and makeup.
- (4) Summary of planning, building control and other files with regard to:
 - Planning Conditions.
 - Bonds required (cash lodgement/insurance) and evidence that it is/are still in place, duration of any insurances to run.
 - Planning contributions payable and evidence of payment.
 - Fire Certification.
 - Commencement Notices
 - Enforcement issues and notices
 - Part V agreements in place.
 - Taking in charge position.
 - Implications of any other relevant codes (Environmental, derelict sites, litter, dangerous buildings).

Assessment of Physical Context and Implications of Incomplete Development:

- 1 Impact of the development “as is” on the immediate community.
- 2 Anti-social behaviour.
- 3 Flooding risks.
- 4 Hoarding condition.
- 5 Footpath / road obstructions.
- 6 Condition of Underground Services.
- 7 Nuisance and dust.
- 8 Security.
- 9 Any Health and Safety issues.

Appendix 3

Site Resolution Plans

Recommended Approach to Site Resolution Plans

This appendix outlines a recommended template for the preparation by developers of **Site Resolution Plans** (SRP). It also outlines some interim steps that can be put in place to address serious shorter term, mainly public safety related issues, on sites pending the preparation of a site resolution plan.

Appendix 4 refers to one example of a site where the site resolution plan process is being implemented.

Objectives of Site Resolution Plans

The objective of the SRP is to explore every option for the unfinished development in question in order to maximise its commercial future and therefore it's potential to be resolved, especially issues that affect local residents.

The SRP process is therefore designed to complement other processes operated by the National Asset Management Agency (NAMA) and financial institutions such as the Receivers Property Business Plan by securing the best possible planning and development outcomes that will maximise the value of the property, its chances of being resolved and addressing issues affecting residents in the development.

The SRP process should ideally be completed over an 8-12 week period.

SRP Actors

The SRP should be prepared by the developer or a receiver where one has been appointed with inputs from:

- Any established residents of the development;
- The local authority; and
- Other interested bodies such as new investors in the project.

Key Steps

There are four principal steps in preparing a SRP as follows:

1. **Scoping;**
2. Identification of **potential development options** for the site;
3. **Evaluation of options and selection of a preferred option;** and
4. **Implementation and monitoring** of the SRP.

Step 1: Scoping (Weeks 1-4)

The initial step in preparing site resolution plans should assess the current status of the development moving on to research the options for the future of the site that may be possible, subject to funding.

This initial stage in preparing an SRP should use similar information to the initial stage of the Receivers Property Business Plan, but more relevant to the SRP and focused on building up a comprehensive overview of the development, including:

- Detailed description of the property location and its current building status, including relevant maps and photographs;
- A high level title review to ascertain ownership, tenant structure, lease terms and issues arising;
- Review of current statutory development and local area plans and / or frameworks in the context of current population projections relevant to the buildings and / or site;
- Review of any current planning applications awaiting determination, possibility of the site being affected by de-zoning / phasing as a result of future development plans and / or flooding / contaminated land type issues arising;
- Surveys of unfinished buildings and sites to ascertain their compliance with current and / or expired planning permissions for the site;
- Surveys of unfinished buildings and sites to ascertain their compliance with current building regulations;
- Surveys of unfinished buildings and sites to assess their current condition and the extent of works required to safeguard the property and / or complete the development;
- Requirement for further surveys and or studies to establish the future potential of the site vis-à-vis current statutory development and / or local area plans;
- Extent of existing local community initiatives / proposals impacting on the future of unfinished buildings and sites; and
- Existence of relevant design and construction personnel to certify compliance with planning and building regulations as required.

Having built up this overview, the scoping stage should proceed to an initial phase of stakeholder consultation with the following:

1. The relevant local authority, including the representative of the local authority's Unfinished Housing Developments Team and any other relevant staff; and
2. The representatives of the established residents.

Once initial information gathering and stakeholder consultation is complete, the person responsible for preparing an SRP should be in a position to identify the key issues facing the development and begin to set out potential options for the development.

The scoping stage should then proceed to round-table consultation with the key stakeholders with a view to exploring potential options for the development.

Step 2: Option Development (Weeks 5-6)

The next step is to explore potential options for the development, including the potential for any innovative partnership models such as either local authority, approved housing body or community involvement in the future of the development.

The following four options can be considered in determining the future configuration of the development:

Option 1: Full completion as originally proposed. This option may be selected for developments in locations close to major centres of future demand for housing and employment, that are close to physical and social infrastructure and that are strategic to develop e.g. in and around the NSS Gateways and Hub locations.

Option 2: Full completion with modifications to the proposed layout and to existing/proposed structures. This option might be considered for developments that are well located but would benefit from alterations to housing types and layout to improve marketability.

Option 3: Partial completion with a strategy for the long term use of any undeveloped lands. This option could apply, where the overall development is not viable in the short term and the best interim strategy would be to complete the section already commenced or consider a reconfiguration of the development and prepare a strategy for the use of residual lands including restoration to pre-development use.

Option 4: Abandonment and demolition. This option should be considered where the development is not considered viable, any partly constructed sites should be secured and consideration given to returning the development to its pre-development use. These considerations should include measures to deal with any existing residents within partly completed areas of the development.

Step 3: Option Evaluation and Selection (Weeks 6-8)

The next stage of the SRP is to identify a preferred option. The preferred option must take account of financial assessments in the Receivers Property Business Plan and incorporate the views of the key stakeholders including, the relevant local authority and its planning and housing policies, the local residents and any new investors.

Evaluation of options and selection of a preferred option from the SRP process should proceed on the basis of comparative analysis of the options across the headings below.

Criteria 1: Cash flow analysis:

This analysis will include details of the opening debt balance, annual and once off fees, income, debt funding costs and net present value (NPV) discounting in line with approved economic appraisal techniques (Cost Benefit Analysis, Multi Criteria Analysis), stress tested across 3 scenario's (Optimistic, Realistic, Pessimistic). What is the NPV outcome of the option across optimistic, realistic and pessimistic scenarios? (High, Medium, Low)

Criteria 2: Market Analysis:

A market analysis for each property will include evidence of sale and letting prices of competing schemes, vacancy rates (from the National Housing Development Survey) and overall assessment of market attractiveness of the development. The following question should be addressed: would the option maximise the attractiveness of the development from a property market proposition? (High, Medium, Low)

Criteria 3: Ready for Sale Analysis:

Ready for sale analysis will include an assessment of the degree to which properties can be readily offered for sale with all required details including good marketable title, certificates and warranties including Building Energy Rating (BER), construction guarantee's and any mitigation measures and costs arising factored into the cash flow analysis outlined above. The following question should be addressed: how ready for sale would the option make the development? (High, Low, Medium)

Criteria 4: Development Partnership Analysis:

Does the option maximise opportunities for innovative development and funding solutions? (Yes, possibly, no). For example, there are a number of potential ways in which housing associations can be part of the resolution to unfinished estates. Each response will be dependent on a mix of factors including the sustainability and suitability of particular sites for further development or acquisition. The potential role of approved housing bodies should be considered in developing options for SRP's including approved housing bodies carrying out the following roles;

1. Acquiring or leasing of the land;
2. Finishing out near complete estates; and
3. Managing agents for finished estates.

Criteria 5: Sustainability and Impact Analysis:

How does the option fit with existing planning and sustainable community criteria such as the criteria outlined in the Planning Guidelines on Sustainable Residential Development in Urban Areas and its advice regarding best practice urban design quality criteria, (responsiveness to context/suitability of location, environmental and community indicators, security/management/sustainability) – (High, Medium, Low)

Selection of a preferred option should be on the basis of the following:

1. The highest scoring option under criteria 1 and 2; and
2. The best average score under criteria 3-5.

The methodology above will maximise the selection of options that make the best commercial and long term planning sense drawing upon, the opportunities for innovative funding models.

A simple concept drawing should be prepared by the developer and his/her agents summarising the key elements of the SRP and finally, a table generated to outline the key and agreed roles and responsibilities of the key stakeholders (Developer/LA/Community) in advancing the plan, including key milestones.

The agreed roles and responsibilities above could include:

- Local authority involvement in securing the sale or lease of vacant housing either directly through its role as a housing authority or in association with approved housing bodies;
- Community involvement in finding long term uses of vacant property for community uses such as childcare facilities;
- Local authority support in identifying best technical solutions in resolving various compliance issues; and
- Developer and local authority co-operation in identifying the best mechanism to regularise the planning status of the development using conventional planning applications, Part VIII mechanisms etc.

Step 4: Implementation and Monitoring

The site resolution plan is designed to assist the more detailed Receivers Property Business Plan procedure in developing workable options and a preferred option for unfinished housing developments. The decision on how to proceed and the implementation of both plans falls to the project promoter and/or financial institution.

In addition, it is strongly recommended that the ongoing progression of each SRP should be overseen by a small liaison team for each development until the site is resolved and the case is discharged. The liaison team should be composed of the:

1. Project developer;
2. Representative of the relevant LA Unfinished Housing Development Team; and
3. Representatives of the local residents;

Appendix 4

Case Study

Battery Court in Longford is a development of over 90 dwellings that commenced in 2006 in a tax incentive area.

Works progressed in stages and included the development of detached, terraced, apartment and duplex housing until the developer's financial difficulties forced the appointment of a receiver in 2010.

Problems experienced as the development progressed were the subject of adverse local and media concerns.

However, the appointment of a receiver has marked a turnaround for the development and, after careful economic assessment and business planning, the development is now well on its way to resolution. In particular the receiver arranged for the funding of:

- (1) Completion of open spaces, lighting, roads and services for completed dwellings;
- (2) Finishing out of dwellings that were nearly complete;
- (3) Some remedial work to improve the quality of completed but unoccupied dwellings;
- (4) Seeking planning permission for the reconfiguration of an unsightly part constructed apartment and duplex complex within the site (see photo).

The outcome of the process as a whole has been very successful so far. In particular:

- Price reductions and increased clarity as to the future of the overall development has improved buyer confidence to the point where a number of dwelling sales have been agreed;
- Complete but un-occupied dwellings will be taken over by a voluntary housing agency; and
- The relevant local authority (Longford County Council) continues to take a proactive and co-ordinated approach to re-assuring purchasers of housing in the development.

Photos 1-3 illustrate the condition of parts of the development before the receiver was appointed.



Photos 4-6 illustrate the condition of the development recently as site resolution progresses.



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