

# COMHAIRLE CONTAE CHORCAÍ



**CORK COUNTY COUNCIL**

## **‘Taking In Charge’ Policy for Private Housing Developments**

17<sup>th</sup> October 2008

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## **1 POLICY OBJECTIVE**

To develop a transparent and effective policy for the ‘taking in charge’ of housing estates in the jurisdiction of Cork County Council as a Planning Authority, so as to ensure that estates are completed satisfactorily and ‘taken in charge’ promptly, for the benefit of the occupants of new housing estates in County Cork.

Cork County Council’s policy in relation to taking in charge of private housing developments has regard to the requirements of Circular Letter PD 1/08 dated 26<sup>th</sup> February 2008 from the Department of Environment, Heritage and Local Government.

The Department of Environment, Heritage and Local Government circular identified the core principles underpinning the framework for taking in charge as follows:

- A statement of the facilities that will be ‘taken in charge’ and the maintenance services that will be provided;
- The issue of ‘taking in charge’ must be addressed at the pre-planning stage with the approved design facilitating the taking in charge of core facilities;
- The Planning Authority’s construction and design standards for residential areas will be set out;
- Developers will be required, through the development management process /permission, to complete residential developments to a standard that is in compliance with the planning permission granted;
- Planning Authorities must take all necessary measures in this regard in particular through securing adequate bonds, inspection of construction and enforcement action when necessary;
- The procedures for ‘taking in charge’ will begin promptly on foot of a request by the majority of the residents in the development or by the developer, as appropriate. Protocols, including time frames, must be set out by Planning Authorities to respond to requests for taking in charge;
- Where there are core facilities in existing residential developments which were approved by the Planning Authority on the basis that they would remain private and be maintained by a management company, these must be taken in charge if the majority of residents request it;
- Planning Authorities must not attach management companies as a condition of planning in respect of traditional housing estates, save in very exceptional circumstances, as set out in the annex to the circular;
- Planning Authorities should only attach planning conditions requiring management arrangements in relation to certain shared facilities in the newer type of mixed residential development in limited circumstances, as set out in the annex to the circular;
- In relation to older estates, priority must continue to be placed on resolving those estates that have been left unfinished /not taken in charge for the longest period.

## 2 POLICY OVERVIEW

### 2.1 *Legislative framework*

Section 180 of the Planning and Development Act 2000, requires Planning Authorities to commence ‘taking in charge’ procedures in relation to residential developments, finished or unfinished, where certain conditions have been met.

The “Taking in Charge” of an estate is a reserved function of the elected members, as defined in Section 16 of the 1940 County Management Act (No. 12 of 1940). This means that officials of Cork County Council do not have the authority to agree to take an estate in charge.

### 2.2 *Policy Statement*

Cork County Council, in exercising its duty imposed by Section 180 of the Planning and Development Act 2000, hereby states its policy for the ‘taking in charge’ of housing estates.

- 1) This policy shall apply in all parts of County Cork for which Cork County Council is the Planning Authority.
- 2) Estates of houses which have been completed to the Council’s satisfaction and comply with the relevant Planning Permissions, will be ‘taken in charge’ by the County Council.
- 3) The legal procedure to be followed for the ‘taking in charge’ process will be that detailed in Section 11 of the Roads Act, 1993.
- 4) Where a housing estate has been ‘taken in charge’, Cork County Council will be responsible for the maintenance of facilities as set out in section 2.4 and 2.5 of this policy document within the relevant estate. However regular grass cutting in open spaces shall normally be undertaken by the residents of the housing estate.
- 5) The commencement of the ‘Taking in Charge’ procedure of a housing estate will normally commence with a request from the developer of the estate.
- 6) Where the development has not been completed to the satisfaction of the Planning Authority and enforcement proceedings have not been commenced by the Planning Authority within seven years of the expiration of the permission, the authority shall, where requested by the majority of qualified electors who own or occupy the houses in question, comply with [section 11 of the Roads Act, 1993](#). In these circumstances, the Planning Authority may spend any security still in place on the improvement of services within the estate.
- 7) The Council will proceed with the ‘Taking in Charge’ process as expeditiously as possible, having regard to the availability of resources, once a valid request for ‘taking in charge’ has been received.
- 8) The Council is prepared to take housing estates in charge on a phased basis, however, phases must be fully completed and be self sufficient in terms of services before any individual phase can be taken in charge.  
Phases served by spine roads, which are to be used for construction traffic for the remainder of a development, will not be taken in charge.

- 9) All services within the estate (or phase of an estate) will normally be taken in charge in one stage. However the Council may, at its discretion, 'take in charge' the public lighting within a housing estate (or phase of an estate) and/or playgrounds with play equipment required by condition in advance of the completion of the remainder of the services within the estate (or phase of an estate).
- 10) The Council is prepared to use the funds available to it under the Security demanded by the Planning Permission for the housing estate, to encourage prompt completion of the housing estate, by the developer, or directly by the Planning Authority in default.
- 11) This policy will be due for review by the Council's relevant Strategic Policy Committee in late 2009 and a recommendation for amendments following such a review will be made to Cork County Council.

### **2.3 Policy Implementation:**

- 1) A Housing Estate, for the purposes of this Policy, shall be a development which includes the construction of two or more houses, and the provision of new roads, Footpaths, Car Parks, Watermains, Sewers, Open Spaces and/or Public Lighting. The Estate will be occupied on a full time basis and shall not be a scheme of holiday houses, special housing or a gated development.

The definition of house in the Planning Act includes a building designed for use as two or more dwellings or a flat, an apartment or other dwelling within such a building of two or more houses.

- 2) Recreation and Amenity facilities developed with housing estates will be considered as part of the open space of the estate and will be 'taken in charge' accordingly as part of the normal 'taking in charge' process.
- 3) Planning Permission for housing estates will incorporate reference to the Council's "Guidelines for Housing Estate Construction" and the Council's "Taking in Charge Procedure for Private Housing Developments" so as to expedite satisfactory completion of the Housing Estate and prompt taking in charge.

The most up to date version of the Council's "Guidelines for Housing Estate Construction" and "Taking in Charge Procedure" will be published on the Council's website and Intranet to ensure easy availability.

- 4) Cork County Council will develop a detailed written Procedure Document which will detail all the steps involved in the taking in charge of housing estates, in conformity with this Policy. The Document shall have as its central aim the expeditious progress of the Taking in Charge process and, to this end, shall include target time frames for all the various stages involved in the process.
- 5) This Procedure Document will be updated by the Council's management on a biennial basis in the light of experience in order that the 'Taking in Charge' process may be optimised over time.
- 6) A specific application form for the 'taking in charge' of housing estates will be developed which will be incorporated in the Council's 'Taking in Charge' Procedure Document, and which will be available on the Council's website and Intranet.

- 7) The security held by the Planning Authority in the form of a Performance Bond will be based on 100% of the construction costs of the relevant services. Credit can be given for works completed satisfactorily by the developer. The rates used to estimate construction costs for this purpose will be updated regularly.
- 8) The Council will have regard to the need to maintain new housing estates to a satisfactory standard in its annual Budgeting process.

#### **2.4 *Facilities to be taken in charge***

‘Taking in Charge’ involves Cork County Council taking control of the following services and public areas associated with a particular development:

- . 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 if the plant is to be a long term solution to a local need. The Council will not ‘take in charge’ any plant that is of a temporary nature to facilitate the development prior to the construction of a major scheme by Cork County Council;
- . Potable water treatment plants and any associated protection zones. The Council will not ‘take in charge’ any plant that is of a temporary nature to facilitate the development prior to the construction of a major scheme by Cork County Council;
- . Public open spaces;
- . Playgrounds, where these are required by condition of a planning permission as facilities for public use.

#### **2.5 *Maintenance services***

The maintenance services that will be provided by Cork County Council, following the completion of the ‘taking in charge’ process, include the following:

- . Maintenance of all roads and footpaths, including unallocated street car parking;
- . Maintenance of water mains and drainage services (except temporary treatment plants);
- . 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 the authority;
- . Road sweeping and cleaning services of the principal public routes within the residential development;
- . Upkeep and maintenance of all public lighting installations including nonstandard 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.

## **2.6 Measures to ensure satisfactory completion of residential developments**

It is essential that public roads, footpaths, services and open spaces in residential developments are finished by the developer to a standard acceptable to Cork County Council for 'taking in charge' and long term maintenance.

Layouts which seek to ensure very low traffic speeds and greater priority for pedestrians and cyclists in residential areas will be encouraged.

Relevant guidance is available from;

- Cork County Council's County Development Plan;
- Cork County Council's Local Area Plan for the area;
- Cork County Council's "Design Guide for Provision of Services in Housing Estates". (Currently being revised);
- Cork County Council's Recreation and Amenity Policy
- The Department of Environment, Heritage and Local Government's Recommendations for Site Development Works for Housing Areas (1998);
- The Department of Environment, Heritage and Local Government's Guidelines on Sustainable Residential Development in Urban Areas;
- The Department of Environment, Heritage and Local Government's design manual, "Sustainable Residential Design, a best practice guide";
- Traffic Management Guidelines (2003) jointly issued by the Department of the Environment, Heritage and Local Government, the Department of Transport and the Dublin Transportation Office;
- UK publication "Manual for Streets", June 2007 (available at [www.dft.gov.uk/pgr/sustainable/manforstreets](http://www.dft.gov.uk/pgr/sustainable/manforstreets))
- Urban Design Compendium", Lloyd-Davies, 2007 (<http://www.urbandesigncompendium.co.uk>).

## **2.7 Application of Standards**

All residential developments granted planning permission must comply with the standards adopted by Cork County Council. The Council's "Design Guide for Provision of Services in Housing Estates" is currently being revised and it is intended that it will be available by the end of 2008.

In general the standards will cover:

- The construction of roads, footpaths, public lighting, walkways, grass verges etc;
- The installation of drainage services, water mains and treatment plants, including a specification of the regime of testing to which these services must conform;

- The location of services provided and maintained by other service providers (telephone, cable television, broadband services etc.) in relation to those provided and maintained by the authority;
- The quality of planting and seeding of landscaped areas, required treatment of public boundaries such as walls and fences, as well as specifications for particular elements in landscaped areas, such as play equipment, where these are to be provided.

## **2.8 *Early identification of the areas to be ‘taken in charge’***

Cork County Council will address the ‘taking in charge’ issue at pre-application consultation stage, when the type of residential development and the standards proposed can be discussed. Applications for residential development should delineate on the site layout map the area that would, in accordance with this document, potentially fall to be taken in charge. It is envisaged that, generally, certain core services will always be taken in charge and Cork County Council will ensure that the design of the approved development will facilitate this by separating the areas/facilities that will be taken in charge from those that will not.

Sewers and water mains should preferably not be located under landscaping or allocated parking areas that will not be taken in charge.

## **2.9 *Appropriate Planning Conditions***

Section 34 of the Planning and Development Act 2000 provides the legislative basis for attaching conditions to planning permissions. Appropriate conditions may be attached to grants of permission for residential development including:

- The giving of adequate financial security [S.34(4)(g)] and the length of time the security must remain in place;
- The facilitation of inspections by the Planning Authority;
- The phasing of the development, if appropriate [S.34(4)(h)];
- The completion of the development in accordance with specified standards;
- The evidence to be produced by the developer to demonstrate that the residential development has been completed to the appropriate standards and the time period for the production of such evidence;
- The maintenance by the developer of the residential development until it is ‘taken in charge’.

A developer is obliged to comply with the conditions of the planning permission granted for the Estate including the payment in full of all development contributions. The Council may take enforcement action under planning legislation if the development is not being or has not been carried out in accordance with the permission granted.

The attention of developers is brought to the provision of Section 35 of the Planning and Development Act, 2000 as amended by Section 9 of the Planning and Development (Strategic Infrastructure) Act 2006. This section deals with the failure of a developer to comply with the terms of a previous planning permission and allows the Council as Planning Authority to refuse a current planning application. If the Council is satisfied that a developer has not complied with a previous planning permission or that a development

would not be carried out in accordance with the conditions of the planning permission, the Council may refuse planning permission subject to giving prior notification and an opportunity to respond..

### **2.10 *Phasing of the development***

Cork County Council will consider whether it is appropriate to attach a condition regarding the phasing of the development in order to ensure that residents do not have to live in uncompleted residential developments for lengthy periods.

A phasing condition could include requirements relating to the completion of roads, public lighting, open spaces, etc. which are necessary for, or ancillary to, the completed units in each phase.

In devising any phasing arrangement Cork County Council will ensure that main sewers, surface water drainage systems, main distributor roads, etc., are completed at an appropriate stage so that the first and each subsequent phase will, on completion, be fully serviced and independent in the event of other phases not proceeding.

### **2.11 *Inspection of Construction***

Ensuring that residential developments are completed in accordance with the planning permission is an essential part of the Council's 'taking in charge' policy.

The construction of the development will be regularly inspected by staff of Cork County Council to ensure satisfactory completion in accordance with the permission. Cork County Council will satisfy itself, when the developer has ceased construction or notified the Planning Authority that construction is complete, or after the planning permission has expired, that the development is properly completed in line with the planning permission and, where it is not properly completed, will take early and effective enforcement action.

Cork County Council will endeavour to be in a position to respond to queries e.g. from purchasers, residents associations or management companies as to whether a development or particular elements of it have been completed in accordance with the planning permission.

### **2.12 *Enforcement action***

While the Council has the option of claiming on the provided security where a development is not being completed in accordance with the terms of the permission, the Council will consider taking enforcement action in such cases.

### **2.13 *Adoption of a Procedure/Protocol***

As part of its 'Taking in Charge' policy, Cork County Council will prepare a Procedure or Protocol – "Taking in Charge Procedure for Private Housing Developments" - for the actual process of 'taking in charge' of a residential development in response to a request from either a developer or a majority of the residents.

### **2.14 *Management Companies***

Management companies will not be required in planning conditions for traditional housing estates (that is estates of houses with individual private gardens) except in the most exceptional circumstances, e.g. to maintain a specific facility in that estate, which is for

residents use only (such as a private playground or a temporary water or wastewater treatment plant) or in the case of holiday homes.

Management companies will normally be considered necessary for multi-unit structures (i.e. apartments and/or apartments and duplex houses) of four dwellings or more or for 'gated developments'. In such developments management companies are necessary to maintain:

- shared exteriors of buildings: e.g. external walls and roofs;
- shared internal areas: e.g. stairways, lifts and lobbies.

The circumstances where Cork County Council might consider attaching a planning condition relating to the maintenance or management of a development are limited and may include the following:

(a) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain external private shared facilities that are exclusive to the development (e.g. boiler houses, switch rooms, bin storage areas communal private gardens/private open spaces, private playgrounds), where a management company is considered essential having regard to the nature and scale of such facilities.

(b) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain facilities which though not necessarily inaccessible to the general public, are not required to be taken in charge, in accordance with this document, e.g. facilities such as highly landscaped open spaces, allocated car park spaces.

(c) To maintain holiday home developments, that is, residential developments where planning permission was applied for, or granted, on the basis that the residential units are holiday homes, or residential developments used entirely for short-term letting.

(d) To maintain gated developments that will not be taken in charge.

(e) to maintain temporary treatment plants that will not be taken in charge.

When a Management Company is considered necessary, the permission will have a condition 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.

Even if a Management Company is proposed for a development, it will be a requirement of the planning permission that the roads, footpaths, services etc. are constructed in accordance with the technical standards outlined in Cork County Council's "Design Guide for Provision of Services in Housing Estates". Any security lodged with the Planning Authority for such a development will not be released until the satisfactory completion of the works and the said roads, footpaths, services etc. are conveyed to the management company.

### **3 GENERAL PRE-CONDITIONS FOR TAKING IN CHARGE**

- 1 The development is an authorised development.
- 2 All development contributions have been paid in full.
- 3 All connection fees have been paid in full.

- 4 The development has been constructed in accordance with the planning permission granted.
- 5 The roads, footpaths, sewers, drains and water mains have been constructed in accordance with the guidance put forward at 2.6 above, save where the conditions otherwise require.
- 6 Evidence shall be provided to the Council that all necessary wayleaves for services are reserved forever in the transfer documentation to house purchasers. A minimum width of 10 metres (to include at least 3 metres on each side) shall be required in respect of any wayleave for sewers or water mains. This width may be reduced in certain circumstances, but only after consultation with the Council.
- 7 Where an area designated as Open Space is to be transferred to Cork County Council, all necessary transfer documentation will have been completed.

## **4 OLDER ESTATES**

### **4.1 *Assessing/categorising requests***

In relation to those requests for ‘taking in charge’ estates currently on hand where the planning permission has expired, Cork County Council will as soon as possible assess the status of such estates. These will generally fall into the following categories:

- Estates which have been completed to ‘taking in charge’ standard but not yet taken in charge;
- Estates which have not been completed in accordance with the terms of the permission and where enforcement action/calling in the bond is still possible;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was not taken within the specified period;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was taken, but was unsuccessful.
- Estates for which an engineering recommendation on ‘taking in charge’ is awaited.

New requests for ‘taking in charge’ of older estates will be promptly assessed and then dealt with in accordance with the procedures set out below.

#### **4.1.1 Estates satisfactorily completed**

Where an estate is completed in accordance with the terms of the planning permission, it will be ‘taken in charge’ without undue delay on foot of a request to do so. The procedures to effect such a ‘taking in charge’ including timescales, will be as set out in the Council’s “Taking in Charge Procedure for Private Housing Developments”.

#### **4.1.2 Priority list for estates not completed satisfactorily**

A priority list will be drawn up of requests from residents for the ‘taking in charge’ of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished. New requests for the ‘taking in charge’ of unfinished estates will be added to the priority list, as appropriate.

All unfinished estates which are the subject of a request to be 'taken in charge' will be kept on this list, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the bond so that these estates remain on the priority list for remedial works by the Planning Authority in the event that enforcement action or calling in the bond fails.

#### **4.2 *Action in relation to uncompleted estates***

Any of the actions already referred to that are still possible in terms of getting the estate completed, other than at the expense of Cork County Council, will be pursued as quickly as possible. It is not acceptable that residents should have to continue to live in an unfinished estate for many years. When the estate is brought to a satisfactory standard by the Council itself, it will be 'taken in charge'. i.e. do remedial works prior to 'taking in charge' rather than 'taking in charge' prior to undertaking remedial works.

#### **4.3 *Remedial Works by the Planning Authority***

In accordance with section 180(2) of the Planning and Development Act 2000 and the guidance set out in this document, Section 11 of the Roads Act 1993 will have to be complied with in respect of unfinished estates (those which have not been completed satisfactorily and where enforcement action has not been commenced within 7 years of the expiration of the life of the permission) where the majority of residents so request and it follows that where enforcement action or calling in the bond is not possible, or has been unsuccessful, Cork County Council will ultimately have to complete such developments to 'taking in charge' standard and funding will be provided from Planning Authority resources to enable this to be done. As stated above a priority list will be maintained of all such estates and remedial works carried out in that order of priority.

## **5 APPLICATION OF POLICY**

The Commencement Date for this policy will be one month after the date of adoption by Cork County Council and it will apply to all estates for which planning permissions are granted after that date and to all requests for "taking in charge", whether on foot of existing or future permissions, received by the council on or after that date.

The "Taking in Charge Procedure for Private Housing Developments" will apply to all requests that are received after the adoption of this policy.

The Policy was adopted at the Council's Development Committee meeting on 17<sup>th</sup> October 2008, so is applicable from 17<sup>th</sup> November 2008.

## 6 EXTRACT FROM PLANNING AND DEVELOPMENT ACT, 2000

**Section 180.**—(1) 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, watermains or drains, 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)*, by the majority of the qualified electors who are owners or occupiers of the houses involved, as soon as may be, initiate the procedures under [section 11 of the Roads Act, 1993](#).

(2) (a) Notwithstanding *subsection (1)*, where the development has not been completed to the satisfaction of the Planning Authority and enforcement proceedings have not been commenced by the Planning Authority within seven 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, where requested by the majority of qualified electors who own or occupy the houses in question, 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\(4\)\(g\)](#) for the satisfactory completion of the development in question.

(3) (a) The Planning Authority may hold a plebiscite to ascertain the wishes of the qualified electors.

(b) The Minister may make or apply any regulations prescribing the procedure to be followed by the Planning Authority in ascertaining the wishes of the qualified electors.

(4) Where an order is made under section 11(1) of the [Roads Act, 1993](#), in compliance with this section, the Planning Authority shall, in addition to the provisions of that section, take in charge any open spaces, car parks, sewers, watermains, or drains within the attendant grounds of the development.

(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.

(6) In this section, "qualified electors" means every person who, in relation to the area of the dwelling houses in question, is registered as a local government elector in the register of local government electors for the time being in force.