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**MIONTUAIRISCÍ NA CRUINNITHE SPEISIALTA PLEANÁLA DE COMHAIRLE  
CONTAE CHIARRAÍ A THIONÓLADH I SEOMRA NA COMHAIRLE, ÁRAS AN  
CHONTAE, TRÁ LÍ, AR AN LUAIN 2 SAMHAIN 2015.**

**MINUTES OF THE SPECIAL PLANNING MEETING OF KERRY COUNTY  
COUNCIL HELD IN THE COUNCIL CHAMBER, ÁRAS AN CHONTAE,  
TRALEE ON MONDAY 2<sup>ND</sup> NOVEMBER 2015.**

**PRESENT/I LÁTHAIR**

**Councillors/Comhairleoirí**

R. Beasley	J. Brassil	M. Cahill
P. Connor-Scarteen	B. Cronin	J.J. Culloty
P. Daly	T. Ferris	J. Finucane
S. Fitzgerald	J. F. Flynn	N. Foley
M. Gleeson	D. Healy-Rae	J. Healy-Rae
N. Kelleher	M. Kennelly	S. Locke
P. McCarthy	T. McEllistrim	J. Moloney
N. Moriarty	D. Nolan	T. O'Brien
B. O'Connell	M. O'Shea	L. Purtill
D. Quigg	J. Sheahan	G. Spring
A. Thornton		

**IN ATTENDANCE/I LÁTHAIR**

Ms. M. Murrell Chief Executive	Mr. M. Scannell A/D. Job Creation/Sust. ED
Ms. A. McAllen, Head of Finance	Mr. C. O'Sullivan, Dir. Op., Health & S.
Mr. O. Ring, Director IW Operations	Mr. J. Breen, Dir. Sust. Comm./Q of L
Mr. P. Stack, SE Planning	Mr. L. Quinlan, SEO Env. Protection
Mr. G. O'Brien, Meetings Admin.	Mr. D. O'Malley, Sen. Exec. Planner
Mr. M. Lynch, SEE Planning	Mr. D. Ginty, Executive Planner
Mr. L. Brosnan, AO Planning	Ms. J. O'Mahony, SO Planning
Ms. M. Buckley, ASO Planning	Ms. B. Reidy, SSO Corporate Affairs
Ms. A. O'Sullivan, ASO Planning	Mr. N. Horgan, CO Planning

The meeting commenced at 2.10pm.

The Cathaoirleach, Cllr. P. McCarthy took the Chair.

The Cathaoirleach extended a vote of sympathy to the McEllistrim family on the death of Jerome McEllistrim. The McEllistrim's are a well known family in the GAA circle.

### **15.11.02.01 Presentation by the Irish Congress of Trade Unions**

The Cathaoirleach, Cllr. P. McCarthy introduced Mr. Liam Berney of the Irish Congress of Trade Unions.

Mr. Berney thanked the Council for the opportunity to address them and added that he was joined by Council Union Stewards and local union representatives. He stated that his purpose was to speak on the Congress Charter for Fair Conditions of work for all employees and to gain the members support for this 5 principle Charter which they had developed. He added that it was the aim of the ICTU to build a national consensus for the Charter. He stated that the ICTU had written to all Councillors outlining the Charter, they had spoken to TDs, Senators and MEPs and was pleased to report that they now had in excess of 125 supporters of the Congress Charter. The second phase of introducing this Charter is to bring it to the members of all Local Authorities and he thanked Kerry County Council for being the first local authority to support them. He added that the ICTU had written to all councillors enclosing a draft motion for inclusion at Council meeting and urged all members to support same.

Mr. Bernie stated that the Congress Charter comprised five principles all about developing fairness in employment for all employees.

#### **Living Wages**

He said that there is a difference between minimum wage which will be €9.15 from January and the amount of money which is required to sustain a decent standard of living which is estimated to be approximately €11.50 per hour.

#### **Fair hours of work**

He stated that this Charter was launched at the time of the Dunne's dispute and this really highlighted what the aim of this principle on the Charter was. There must be an end to low and zero hour contracts and precarious work practices.

#### **Right to Representation & Collective Bargaining**

Every worker has the right to be represented without fear of victimisation and to have a union represent them in collective bargaining negotiations with their employer. This right is recognised by the United Nations as a fundamental human right. The European Convention on Human Rights also recognises the right of workers to be represented and to engage in collective bargaining. Ireland has no legal framework which supports workers seeking to assert these rights.

#### **Respect, Equality & Ethics at Work**

Every worker is entitled to be treated with respect and dignity, as they go about their work. No one at work should be subjected to discrimination, harassment, bullying or any other form of abusive behaviour. To ensure this right is vindicated, a national Charter of Workplace Ethics must be developed and put in place.

## **Fair Public Procurement**

Every worker employed under a publicly-tendered contract is entitled to enjoy all the rights and protections outlined in this Charter.

Mr. Berney stated that their campaign to address all local authorities in the country has now commenced and next year it is intended to address the private sector, voluntary groups and community groups. It is intended to publish an interim report on the outcome of their Campaign. He called on all members to sign the Charter and to return it as soon as possible.

Cllr. P. Daly welcomed Mr. Berney to the meeting, stated how important it was to have him here and added that he supported the Charter 100%. He stated that he previously moved a Notice of Motion calling on the Council to invite the Unions to address the members of Kerry County Council but this motion was defeated. He added that a substantial amount of employers are getting Council contracts and are disallowing their employees from joining unions and he asked that the ICTU would lobby against such practices.

Cllr. M. Gleeson welcomed Mr. Berney and added that he was a long time Trade Union Member. He stated that No. 4 is the most important principle on the Charter and stated that respect, dignity and ethics at work were considerably lacking in workplaces through the years and continue to do so to this present day. He added that a lot of employees continue to be treated like second class citizens. He added that we have all read about sweat shops operating in third world countries yet there are considerable difficulties in Irish companies also. He suggested that there should be an international dimension to the Charter also.

Cllr .T. Ferris welcomed Mr. Berney and complimented management for organising the presentation. She stated that she couldn't see any reasons for objections to this Charter and urged that all members support same.

Cllr .J. Finucane welcomed Mr. Berney and the representatives of the ICTU to the meeting. The timing of the introduction of this Charter is apt as the country comes out of the economic crisis. He added that banks and financial institutions were responsible for the economic demise of the country yet the individual persons had to pay the price.

Cllr. N. Foley welcomed the ICTU to the meeting and added that there was nothing in this Charter for people to disagree with. She added that the public need to be reminded of the core values of the Unions. She congratulated Mr. Berney on the campaign and for bringing the Charter through the Local Authorities which in turn will filter through to the general public.

Cllr. T. O'Brien welcomed Mr. Berney to the meeting and pledged his and the support of the Labour Party to the Charter.

Cllr. D. Healy-Rae welcomed Mr. Berney and the union members in the public gallery to the meeting. He added that he had worked with union members in all departments of the Council. He added that the workforce in Kerry County Council had depleted and that there was pressure on the remaining staff to get work done. He added that they were working far beyond their hours completing paperwork and taking telephone calls. He asked Management and Unions to ensure that the numbers of workers in areas such as Roads and Water Services be increased. He added that previously there would have been 6 groups of workers in the Killarney engineering area where now there is only 3 with an enlarged engineering area.

Cllr. J. Healy-Rae added that he too would like to be associated with the welcomes to Mr. Berney and the union members in the gallery. He stated that zero hour contracts should not exist and that a substantial amount of staff have been temporary for years. He added that there are 15 less roads staff in his area and with the amount of maintenance and works to be done this should not be the case. He expressed concern at the delay in carrying out housing repairs as Unions must be consulted prior to commence of works. He added that if he had to find a problem with Unions it would be that some Unions are aligned to certain political parties and he added that all unions should be strictly independent. He added that Unions should not be in the same buildings or paying rent to any political party. He said that the Unions had his full support otherwise.

Cllr. S. Cosai Fitzgerald welcomed Mr. Berney and thanked management for inviting the ICTU to address the members. He added that everyone is entitled to a fair days work for a fair days wage. He said that the public procurement policy needs to be looked at so to avoid issues such as occurred in the past with the Dingle road contractors where their employees had to resort to blocking the road to get monies owed to them. He said that management have a role to play in ensuring this situation does not arise again in the future.

Cllr. J. Brassil expressed his apologies for missing the presentation. He said the goal of €11.50 living wage was realistic and achievable and he hoped that all employers would be willing to meet it. He pledged his full support to the Charter.

Cllr. S. Locke stated that he has been a trade unionist most of his life. He added that he was a Shop Steward and expressed the difficulties staff had in getting a mere 2% pay rise. He stated that the minimum wage is not the living wage as the minimum wage does not increase with the cost of living. He concurred with previous speakers in that Trade Unions should be separate from political parties.

Cllr. A. Thornton welcomed Mr. Berney and said that she wished to disassociate herself from comments suggesting that Trade Unions had alignments with particular political parties she felt that the opposite was actually the case.

Cllr. M. Cahill welcomed Mr. Berney and thanked him for his presentation. He said that he fully supported all that was said and welcomed the reference to bullying and abuse behaviour in the workplace in the Charter.

Cllr. M. Kennelly welcomed the delegation and stated that he too had previously been a shop steward. He welcomed the campaign and pledged his full support to it.

Cathaoirleach Cllr. P. McCarthy agreed with the sentiments of all the other councillors and stated that the Charter was receiving lots of support in Kerry County Council. He added that the Charter is well timed as the economic crisis being to fade. He added that if all members would aspire to a situation where Ireland was a good country to live and work. He thanked management for getting the ICTU delegation so quickly.

Mr. L. Berney, ICTU, stated that this public procurement policy can achieve lots of social objectives. He added that a lot of local authorities strive to ensure that they employ people from their area to ensure work is completed satisfactorily. He added that the ICTU will be issuing directives to ensure that we meet our social obligations. He added that Trade Unions are democratic organisations and it is the members that chose who to associate themselves with. He added that most Trade Unions have members across all political parties and the Union tries to represent all their members equally. He added that this was a non political campaign and it attempts to build consensus on fair conditions at work for all employees. He again thanked the members for their valuable response and added it was nice to know that the members thought it was a worthwhile venture.

#### **15.11.02.02 Approval for the opening of tenders.**

On the PROPOSAL of Cllr. N. Kelleher, SECONDED by Cllr. J. Finucane it was AGREED to approve the opening of tenders for Kerry County Council National Route Safety Barrier Scheme – Closing date Friday 6<sup>th</sup> November, 2015 at 12 noon.

#### **15.11.02.03 Presentation on Planning**

#### **Part V of the Planning and Development Acts**

Mr. J. Breen, gave the following presentation on Part V of the Planning and Development Acts

#### **CHANGES TO PART V OF PLANNING AND DEVELOPMENT ACT 2000** **Urban Regeneration and Housing Act 2015**

#### **Urban Regeneration and Housing Act 2015**

- *Effective 1 September 2015*

- *Sections 31-33 and sections 35 and 36*
- *Amends Part V of the Planning and Development Act 2000*
- *Significant changes contained in Act*

### CONTEXT

- *The specific amendments relating to the operation of Part V have been made following detailed consultation and aim to:*
- *Enhance the economic viability of developments;*
- *Maximise the opportunity for the delivery of social housing units;*
- *Secure the principle of integrated mixed tenure developments; and*
- *Address weaknesses in aspects of the existing legislation identified in a number of court judgements.*

### CHANGES

- *Action 33(1)(a) of the Act of 2015 requires a Part V agreement to be reached between the developer and the local authority PRIOR to the lodgement of the commencement notice.*
- *Applies to development of 9 or more houses*
- *Change to 10% - from 20% - the percentage of land that must be provided for social and affordable housing in a housing development.*
- *Direct transfer of completed social housing units, or 10 year minimum lease of units on the development land*
- *Transfer of a portion of land on development site*
- *Direct transfer of units on other land*
- *A combination of the above*
- *Transfer of other lands or cash payment is now gone*

### TRANSITIONAL ARRANGEMENTS

- *Provision has been made in the Act of 2015 to the effect that where a commencement notice has NOT been lodged in respect of a particular development, the new Part V arrangements can, with the consent of the local authority and the developer, be retrospectively applied to existing planning permissions*
- *Housing Strategy must be reviewed to take account of lower 10 % requirement for social housing.*
- *Briefing being organised for Kerry branch of CIF on new arrangements and housing needs of Local Authority*

*Building Control*  
*(Amendment )(No. 2) Regulations*  
*2015*  
*New Building Control*  
*Regulations 2015*

- *Effective 1<sup>st</sup> September 2015*
- *Single units of construction have been given the option of exemption from many provisions of the building control regulations*
- *Building Control registration now applies to LA own development – previously exempt*
- *Two tier system now created*
- *Does NOT apply retrospectively*

*IMPACTS*

- *Article 9(5) enables an owner of a single dwelling, or single unit development, or an extension to a dwelling ( in excess of 40sq mtrs), to opt out of the requirement to obtain statutory certificates of compliance with building regulations in relation to the building concerned*
- *Each Local Authority to submit from January 1st 2016 quarterly reports to DOECLG outlining the number and type of building control inspections that have been carried out in their functional areas.*

*Opt Out Provisions*

- *Applies to single units and extensions*
- *Information Note for Owners published*
- *Must declare the intention to Opt Out and sign form*
- *Advised to obtain legal and insurance advice*
- *An online system known as the Building Control Management System or BCMS has been set up to facilitate the electronic administration of building control matters*
- *<https://www.localgov.ie/en/link-type/bcms>*

Cllr. T. Ferris referred to the development of individual units and the 10% that applies under Part V to development of nine or more houses and asked if permission could first be sought for eight houses and later a further permission sought for eight more. Would this be exempt from Part V.? She also asked which were preferable to the Planning Authority – housing units or 10 year leases.

Mr. J. Breen stated that the Act says that it is the cumulative number of developments. The Council would prefer lease arrangements by virtue of the cost involved.

Cllr. T. Ferris stated that the Council would be spending a substantial amount of money on leases over a ten year period and added that it would be better in the long run if the Council bought the units as in the end they would own a tangible asset and tenants would have greater security.

Ms M. Murrell stated that it would depend on the development proposed and what the applicant was proposing in their application. She added that the Council favoured lease agreements over the acquisition of suitable units.

Cllr. T. Ferris stated that the requirements of the Building Control legislation are unfair and are only in a short time. She asked if those that had submitted a Commencement Notice for a single unit can now opt out. She understood that no single unit commencement notices were received by September 2015.

Cllr. M. Gleeson said that he was glad that the system as introduced under the 2000 Act has changed as it was not working satisfactorily as there were a lot of clever steps that could have been undertaken to go around the requirements. He asked if there was any definition of cumulative number of years. He said he was glad that the transfer of lands at an alternative site was no longer an option. He said that building control had failed in Ireland and there were bad practices in housing not just Priory Hall. He mentioned that he had a Notice of Motion previously requesting that any application for planning should be supervised from start to finish and he failed to understand how the obligation for planning control does not rest with those responsible for granting of the planning permission. He asked if an 80 unit apartment complex classed as a single development and what constitutes multi- developments. The new Building Control requirements have implied huge costs on planning applicants.

Mr. J. Breen, confirmed that an 80 unit development would not be considered a single development

Cllr. N. Kelleher asked if a developer sought to build 100 units in Killarney could he provide his Part V units in Scartaglen

Mr. J. Breen said that Part V units can be provided anywhere within the Councils functional area once a housing need exists. The Council would not have to accept alternative proposals in an area where there isn't a demand and the Housing Strategy is clear on this.



Cllr. N. Kelleher said he saw a massive loophole in this legislation as values of properties in Killarney would be far greater than those in Scartaglen and he asked if the Council could refuse an applicants proposal. He added that developers may buy cheaper lands in Scartaglen and sell this to the Council to meet their Part V obligations and continue to build the units on the higher valued land in Killarney. He estimated that property value in Killarney has increased by approximately 30,000 in the past year and when you compare this with prices of units in Scartaglen you could be talking of a 100,000 price difference.

Mr. J. Breen stated that the developments cannot commence until a Part V agreement is in place.

Cllr. J. Brassil asked if it was possible to get a retrospective commencement notice submitted where developers commenced their development without having a commencement notice submitted and if this was not possible what the implications for the developers were.

Mr. J. Breen stated that he had received numerous queries regarding developments that had commenced yet no commencement notices had been submitted and he wished to clarify that this would not be possible as you can only commence a development once and the new regulations came into force from September.

Cllr. B. Cronin stated that he shared the sentiments expressed by other members present and added that he too thought there seemed to be a loophole where developers can purchase cheaper units in locations such as Firies or Rathmore and offer these to the Local Authority as their Part V contribution and build their units in Killarney at a higher selling value. He was concerned about the financial gain that the developer would get. He added that the Housing Estates Unit do great work and are extremely busy trying to remedy developments carried out by a lot of rogue developers in the county and he urged the Council to be mindful of this situation arising again in the future. He also urged caution for people wanting to build single houses and opting out of the Building Control Regs and he asked what would the situation be in ten years time if it was necessary to sell the property.

Mr. J. Breen, stated that this was the reason applicants are advised to seek legal advice prior to opting out of the Building Control Regulations whilst there would be a cost saving there was also the bigger picture of perhaps needing to sell down the line which should be considered. He added that however, an applicant would not be in breach of their obligations under Building Control legislation by opting out of the Regulations.

Mr. M. Scannell, clarified that there would not be any gain for the developers by meeting their Part V obligations in areas other than the site they are seeking to develop. The contribution required to be given to the Local Authority would be 10% of the land value of the site on which they are seeking permission. If the value is deemed to be €50,000 in Killarney then the cost of the contribution in Scartaglen will be reduced by €50,000 irrespective of the values that pertain in Scartaglen.

Cllr. T. Ferris referred to lands the Council had received in Killorglin under the old Part V regime and the Council were subsequently told that these lands were not suitable for housing and she asked that this situation should not arise again.

Ms M. Murrell stated that the critical difference in the new Regulations is that the Part V agreement must be finalised prior to the commencement notice being submitted. She added that all Local Authorities had learned from the mistakes of the past. She added that if it is units that are required in Kerry then Kerry County Council would seek to get units under the Part V agreements. She added that it was a comfort to the Council that the agreements must be in place prior to the submission of the commencement notice.

Cllr. A. Thornton asked if there was a commencement notice required for liveable units in ghost estates where retention permission was being sought and also could a new Part V agreement be sought

Mr. J. Breen confirmed that a commencement notice would be required and if there is an active planning permission then the new Part V regulations can be applied prior to the submission of the commencement notice.

Cllr. J. Finucane stated that some of the changes were very welcome and would be a great incentive for the construction sector. He stated that he had issues with the opting out process and could not see the logic in it as it would virtually render the unit unsellable in the future. He added that the housing market in the Tralee area has not improved as there is not a demand for houses. He added that he was only aware of one developer operating the area at present and at that he was only building one unit at a time. He suggested that the Council should seek to offer a Tenant Purchase Scheme as long term leasing is not an attractive option for a lot of people, schemes such as the RAS Scheme is also not a satisfactory option as it is not a local authority house. Most tenants aspire to purchasing their own home. There should be greater emphasis on the purchase of housing as long term leasing is not an attractive option.

Cllr. J. Healy Rae concurred with Cllr. J. Finucane and stated that he was one of a few councillors who voted against the building regulations in particular with regard to the requirement for one off houses. He added that many people are choosing to build by direct labour to ease costs and stated that the certification required under the new Regulations would add between 5,000-15,000 to the cost of a house. He saw it as a positive step that the council could accept units in other parts of Kerry and stated that the council would likely be looking for units in places such as Caherciveen, Sneem, Kenmare and Kilgarvan where it is more difficult to get developers to build. In the past he had proposed that the Council would purchase a housing development in Castlemaine.

Cllr. J. F. Flynn asked where did the Council stand in relation to ghost estates such as the one in Castlemaine where the Council did not know who the developer was and he also asked was there any Tenant Purchase Scheme coming down the line.

Cllr. D. Healy-Rae stated that affordable housing was a disaster in Killarney where six units had been lying idle for years as it was cheaper to buy a unit on the open market than to buy in the affordable housing scheme. There is merit in providing social housing but not affordable housing.

Mr. J. Breen clarified that there was no Affordable Housing Scheme presently on offer.

Cllr. D. Healy-Rae suggested that in the case of where 80/100 units are granted that this Council would insist on the development being completed in stages and thus should help stop the situation of ghost estates arising again. He stated that it was unfair that a person seeking permission to build one unit were being asked to provide proof of his right to live in the area whilst a developer can build 100 units without any such requirements.

Cllr. J. J. Culloty welcomed the Part V reduction to 10% and stated that it may be the difference between a developer applying for a development or not. He stated that even though there was an extra cost on applicants to sign up for the new Building Regulations he could see that it was the right thing to do as banks etc would be requiring the certification in the future.

Cllr. N. Foley stated that whilst she accepted that the figure of 80/100 units were being given as an example today, the Council should never have huge developments like this in the County again. She added that it was crucial that all Part V agreements be in place prior to commencement notices being submitted. She asked that she be notified of any future Tenant Purchase Scheme. She added that a lot of tenants are expressing a desire to own their own home. She requested an update on the housing of refugees in the County and asked would they be housed in Tralee or in the greater Kerry area.

Cllr. D. Nolan asked if the approved housing bodies and the Local Authority would be seeking units from the same developments in accordance with Part V and she hoped that the Council would get the full 10% of Part V allocations. She also called on the Council to purchase houses.

Cllr. B. O'Connell stated that the Local Authority should be prioritising rural renewal and aim to revitalise villages such as Brosna, Knocknagoshel and Scartaglen. He added that approximately 4 out of every 5 houses in villages are either deserted or dilapidated and he asked that the Council would look at buying units in these villages where all facilities and services are available.

Cllr. P. Daly concurred with Cllr. O Connell that the Local Authority should be renewing areas where all services are available. The Government must authorise the construction of social housing as they had done in the past.

Cllr. P. Connor-Scarteen stated that he was aware of a Council estate in Kenmare where there were no footpaths and added that this situation should not arise in the future.

Cllr. M. Cahill asked if the reduction from 20% to 10% in relation to Part V still related to zoned lands only and if there had been any further correspondence from the Department in relation to a housing development in Ardmoniel in Killorglin. He added that there are 5000 qualified yet it is only proposed to develop housing units in 3 towns in the county.

Cllr. D. Quigg asked if a Clerk of Works carried out staged inspections. He said there is little or no accountability and this must be rectified. He stated that all development should be signed off at different stages going forward. He asked that the Local Authority proceed with the development in Ardmoniel, Killorglin as soon as possible. He stated that Minister Alan Kelly is saying that the Local Authorities have the funding yet there are no signs of it being used.

Cllr. R. Beasley stated that he was greatly concerned about the housing crisis in the County with over 5000 qualified applicants on the housing list. He said that there are people on the list for between 7-10 years in the Ballybunion area and it was getting to be an embarrassment for public representatives as they never had news of progress for their constituents.

Cllr. J. Healy-Rae asked if the County Development Plan needed to be changed as a result of this new legislation. He raised the situation of a family in his area who were granted planning and fulfilled the seven year occupancy clause. The owner became unemployed and he got agreement from the Banks to sell the property himself. He found a buyer for it but it emerged that this buyer was not entitled to purchase the property as he would not be his primary place of residence. The sale subsequently fell through and it has since become apparent that the Bank can now sell to any purchaser without the permanent place of

residence or 7 year occupancy clause stipulation. He asked when someone has fulfilled the 7 year occupancy clause that it would not be transferred to the new owner and that it would not be a requirement for the new purchasers permanent place of residence.

Cllr. D. Healy-Rae seconded this motion.

Mr. J. Breen stated that there was no update on a Tenant Purchase Scheme. He added that the Council were working with approved housing bodies in relation to sourcing accommodation for refugees. He said that these new changes to Part V related to zoned lands only. Members will be briefed at Municipal District meetings on the housing programme. He added that equally nobody in Kerry was required to sleep on the streets as there were numerous services available in the County.

### **PLANNING ENFORCEMENT**

Mr. C. O'Sullivan introduced a presentation on Planning Enforcement and briefed members in detail on same.

#### ***KERRY COUNTY COUNCIL Planning Enforcement***

#### ***Presentation to Council – 2nd November 2015***

***Charlie O'Sullivan***

*Director of Operations, Health and Safety*

*Kerry County Council*

- *Overview*
- *Key Objectives*
- *Statutory Requirements*
- *Indicators*
- *Compliance / Resolution*
- *Decision Making Process*
- *Staff Structure and Roles*

***“Effective enforcement is vital for the credibility of the planning system”.***

***KEY OBJECTIVES in planning enforcement are:***

- *to bring unauthorised development under control*

## Special Planning Meeting

- *to remedy any undesirable effects of unauthorised development including, where necessary, the remediation of negative effects of the development, the removal or cessation of unacceptable development; and*
- *to take legal action, where necessary, against those who ignore or flout planning legislation.*

### **Statutory Provisions**

*Sections 151 – 164 of the Planning and Development Act 2000 [as amended]*

### **Statutory Procedures**

- *Investigate*
- *Decision to Issue Warning Letter*
- *Decision Issue Enforcement Notice*
- *Steps to address Non- Compliance with a Notice*

### **Our Statutory Obligations**

*Obligated to investigate breaches of the planning code, unless complaint is considered to be trivial or vexatious*

### **Our Statutory Obligations**

- *Where Council receives a written complaint or forms the view that unauthorised development may have been, is being or may be carried out, it is obliged to issue a warning letter to the owner **or** person carrying out the development, unless the development in question is of a trivial or minor nature, within 6 weeks of the representation [Section 152].*
- *The warning letter to be issued is in a prescribed format [Section 152 (4)]*

### **Our Statutory Obligations**

- *A decision on whether to issue an enforcement notice must be made within 12 weeks of the issue of a warning letter.*
- *The decision made by the Council shall be entered in a register. [Section 153]*

### ***Our Statutory Obligations***

- *Where a decision is made to enforce, obliged to serve an enforcement notice, in a prescribed format [Section 154 (5)], on the person carrying out the development and where considered necessary on the owner or occupier of the lands. The timeframe for compliance with an enforcement notice shall not exceed 6 months.*
- *Where a decision is made not to enforce, obliged to notify any person on whom a warning letter was served and any person who made a representation within 2 weeks of the making of the decision [Section 154 (2)]*

### ***Non-Compliance with Notices***

- *Where the steps specified in the enforcement notice are not taken within the specified time, the Council (a) may enter on the lands to carry out the steps necessary [Section 154 (6)] or (b) seek an injunction in either the Circuit Court or the High Court [Section 160)]*
- *Where the Council enters on the lands to take whatever steps are necessary it may recover any costs reasonably incurred either (a) as a simple contract debt in any court of competent jurisdiction, (b) apply a charge on the lands or (c) by vesting the lands in the ownership of the local authority. [Section 154 (7)].*

### ***Penalties - [Section 156]***

- *On Conviction on Indictment – fine not exceeding €10m or imprisonment not exceeding 2 years*
- *On summary conviction – fine not exceeding €1,500 or imprisonment not exceeding 6 months*
- *Further penalties for failure to comply with a direction by the Court*

### ***Recovery of Costs***

- *Where the Council initiates injunctive proceedings under Section 160, the Court is obliged, unless there are special or substantial reasons for not doing so, order the payment of costs and expenses of the action, to the planning authority.*
- *These costs shall include any such costs or expenses reasonably incurred by the authority in relation to the investigation, detection and prosecution of the offence or order, including costs in respect of the remuneration and other expenses of employees, consultants and advisers. [Section 161]*

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- *Council can also recover reasonable costs and expenses incurred in relation to the investigation, detection and issue of an enforcement notice concerned and any warning letter [Section 154 (5)(d)]*

### **Register**

- *The Council is obliged to enter the particulars of any enforcement notice in the register.*
- *An enforcement notice shall cease to have effect after 10 years*

### **Records and Transparency**

- *All documentation relating to enforcement actions (including correspondence; planner's report to the Chief Executive or her designated official; Chief Executives's decisions; representations made under section 152 of the Planning Act; warning letters; enforcement notices; notes on site visits, etc.) are retained on file readily available to all parties directly involved and to the general public.*
- *Exceptions to this general approach arise where*
  - *availability of documents could prejudice a possible court action,*
  - *availability of documents would reveal the identity of complainants (in order to prevent possible intimidation),*
  - *the planning authority exercises a discretion that sensitive personal data should not be disclosed.*

### **Procedures & Process**

- *When is a Development Unauthorized ?*
- *The development is not exempted development*
  - *[works of a minor nature for which planning permission is not required- interior improvements, maintenance or alterations; works that do not materially affect the external appearance of a structure; building of an extension, shed, garage, boundary walls etc, within the curtilage of a house subject to conditions and limitations; certain categories of change of use & certain agricultural uses or other uses of lands as prescribed in Section 4 of the Planning & Development Act]*
- *Planning permission is required but has not been obtained*



## Special Planning Meeting

- *Planning Permission was granted but the development is not completed in accordance with the conditions attached by the Planning Authority*

### **Indicators**

- *Alleged Breaches Investigated*
  - 2014 228
  - 2015 154 (to end of August)
- *Alleged Breaches where no further action was warranted*
  - 2014 114 (50%)
- *No. of Warning Letters and Enforcement Notices Issued*
  - 2014 262
  - 2015 155 (to end of August)

### **Compliance/Resolution**

- *A successful resolution is achieved in approximately 70% of cases where an Enforcement Notice is issued.*
- *Where a resolution is not achieved – risk assessment carried out prior to initiating any Court proceedings*
- *Since 1st January 2013 – 17 cases finalized where Court action had been initiated.*

### **How is Compliance with an Enforcement Notice Achieved?**

- *Unauthorized development (or element of same) addressed – works altered or removed to our satisfaction*
- *Retention Permission sought and granted*

### **Factors Considered**

- *Is a complaint vexatious or frivolous – history of complaints (planning, environment, roads.)?*
- *Is the breach intentional / unintentional? If unintentional, usually can be addressed through negotiations.*

## Special Planning Meeting

- *Size and Scale of the unauthorized development – minor or trivial complaint?*
- *What is the impact on the environment?*
- *What is the planning history for the site?*
- *Is there a history of unauthorized developments by the developer?*
- *Strength of the detailed evidence? - Will the complainant give evidence?*
- *Legal advice*
- *Costs (Direct & Indirect)*
- *Ombudsman's Role*

### ***Important to Note***

- *Council has invested significant resources on providing a pre-planning service (which has contributed a low refusal rate in planning decisions – 6%) This service is also available to applicants seeking advice on a retention application.*
- *No winners in Court – significant costs for all parties - primary objective is to resolve issues without recourse to the courts, but if necessary Council will pursue the case.*
- *An individual can initiate Section 160 injunctive proceedings – not the sole preserve of the Planning Authority – may also be injuries which are outside the remit of the Council (civil matters)*

### ***Revised Structure***

*Why ?*

- *Need to Consolidate Resources with amalgamation of 4 Planning Authorities & Enforcement Units.*
- *Co-ordination of all Enforcement activity (Environment, Planning, Roads) – reduce number of complaints being investigated by 2 or more directorates and address vexatious or frivolous complaints.*
- *Corporate Governance – need for a clear separation of functions between enforcement and the planning decision process .....yet acknowledging the need for enforcement staff to be familiar with any planning history on site.*

***Staff Roles – Planning Enforcement***

- *Planning Enforcement assigned to Directorate of Operations, Charlie O’Sullivan*
- *Liam Quinlan, Senior Executive Officer, assigned to manage Planning Enforcement, reporting to Director of Operations*
- *Liam Quinlan will schedule monthly meetings with Michael Lynch SEE Planning, Mick Boyce SEE Environment and Jim Fox Planning Enforcement Officer, to review all Warning letters, Enforcement Notices to be issued. Where the issue of an Enforcement Notice is considered urgent Liam will consult with the above.*
- *Jim Fox, Enforcement Officer, will investigate all breaches and present a detailed report on his findings.*
- *Decision on whether or not to initiate legal proceedings will be determined by the Director of Operations, based on Risk Assessment carried out by Liam Quinlan.*

***Staff Structure (Development Control within Operations)***

Cllr. T. Ferris stated that she had requested this meeting five months ago and expressed her dissatisfaction at the manner in which this meeting was held. She understood that this meeting was to be held “in camera” where there could have been a frank exchange of views as she cannot discuss individual cases in the current format of the meeting. She added that she has served as a councillor for a considerable amount of time that this meeting has proved to be of no benefit to her as it did not address her concerns and did not explain how certain decisions had been reached by the Planning Authority. She added that she has no idea how Kerry County Council ended up before the Courts recently where the outcome did not reflect well on Kerry County Council.

Ms. M. Murrell stated that the Council had agreed to a Special Planning Meeting however, she would have no issues with the holding of a meeting in committee if that was the members wishes. She added that the purpose of the meeting was to brief members on the level of activity in the Planning Enforcement Unit. She stated that 70% of cases are resolved when Enforcement Notices are issued and she stated that legal recourse was not always the best resolution. She added that in light of the recent court decision a more robust system has now been put in place.

Cllr. T. Ferris stated that it was not possible for members to challenge Mr. O Sullivan’s contention about various complaints without citing individual cases.

Cllr. A. Thornton thanked the management for holding this meeting and stated that she, as a new councillor, has found it to be very beneficial.

## **MATERIAL CONTRAVENTION OF THE COUNTY DEVELOPMENT PLAN**

Mr. M. Scannell, introduced a presentation on Material Contraventions of The County Development Plan and briefed members in same.

### *Material Contravention of The County Development Plan Special Planning Meeting 2nd November 2015*

#### ***Development Plan***

- *Dev Plan is of central importance to the planning process*
- *Sec 34(2) requires a PA to have regard to its provisions when deciding on an application*
- *Consider whether any development would on its own or in conjunction with others seriously prejudice an objective of the plan*

#### ***Material Contravention Process***

- *Sec 34 (6) of P&D Act 2000 as amended by Sec 23 of P&D Act 2010 & Sec 21 of the LGR Act 2014*
- *Within this legal framework the PA may consider granting such a permission*
- *Following consideration of such an application a recommendation of the SEP/SEE to initiate the procedure is submitted to Dir. of Planning to be confirmed or otherwise by delegated order.*

#### ***Public Notice***

- *Notice in prescribed form is published in daily newspaper*

*Indicating PA's intention to consider deciding to grant the permission  
Specifically state which objective of the development plan would be materially contravened*

#### ***Inform Relevant Interested Parties***

- *The Applicant*
- *Public Bodies that received notice of the application*
- *Any Third Party that made a submission on the application*
- *Any submission received as regards the making of the decision within 4 weeks of the publication of the notice shall be considered by the PA*

#### ***Report for Members***

## Special Planning Meeting

- *Not later than 6 weeks after the publication of the notice the CE shall prepare a report for the Members*
- *Main reasons and considerations on which the proposal to grant permission is based*
- *Summarising issues raised in any submission*
- *Advising members of compliance or otherwise of any relevant ministerial guidelines or any relevant policies of the government/minister or a regional spatial or economic strategy*

### ***Consideration by the Elected Members***

- *The report shall be considered by the members before a resolution is passed*
- *Three quarters of the total members of the MD (entire Council if it impacts on more than one MD or is of strategic importance to the county) must vote in favour of the motion (disregard fraction ie round down)*
- *The members are required to consider solely the report and issues relating to the proper planning & development of the area*

### ***Consideration by the Elected Members***

- *Members must act in a Quasi – Judicial manner*
  - *Objectively determine the facts and draw conclusions from them*
  - *Ignore any extraneous matters including the personal circumstances of the applicant or any party to the application*

### ***Level of Material Contraventions***

- *Not widely used*

2011 2

2012 6

2013 1

2014 4

2015 2

Cllr. B. Cronin thanked Mr. Scannell and Mr. O Sullivan for their presentations and for making them aware of all the personnel changes. He added that he had always defended the Planning Enforcement Unit as it is there for the benefit of the public against breaches of Planning legislation both accidental and intentional breaches. He added that he had seen a lot of cases recently where people with strong financial backing can show blatant disregard for their neighbours and they can frustrate the system. He added that he had one major issue with the separation of the Planning Enforcement Section from the main Planning Unit. He stated that he was aware of an instance where a Planning Officer grants a development and the developer does not adhere to the conditions and a complaint is made. The applicant spoke to the Planner who told him that there was no planning required for the additional works however, a complaint was subsequently made and a warning letter issued from the Enforcement Unit

resulting in the developer having to apply for permission. It was obvious in this case that the Enforcement Unit had no discussion with the Planner involved. He said that whoever is assessing planning enforcement complaints needs to have substantial planning experience and it is crucial that there is good communication between all areas in Planning.

Cllr. J. Moloney asked for clarification on the timeframe for issuing of warning letters and enforcement notices.

Mr. C. O Sullivan stated when a Warning Letter issues the recipient has six weeks to comply with the terms and the terms of an Enforcement Notice must be complied with within 12 weeks. It is possible for an Enforcement Notice to be issued without a Warning Letter depending on the seriousness of the case. He added that Planning Enforcement legislation was complex and it was necessary that each case be looked at individually. He added that it was possible to apply for permission to retain once an Enforcement Notice had issued. He added that in accordance with proper governance the Enforcement Unit is located in a different department.

Cllr. J. Moloney asked in the instance of a developer with the bad planning record would an Enforcement Notice issue once a complaint is made.

Mr. C. O Sullivan stated that court proceedings result in a long and expensive process and he said that the history of a development on site is considered and if the developer has a history of non compliance this may influence the actions to be taken.

Cllr. N. Kelleher referred to planning enforcement and urged the Council to be cautious and ensure that it is not open to be taken to court by a third party. He referred to a recent case where a Certificate of Exemption (Section 5) application was applied for and granted without any submissions and subsequently enforcement proceeding issued. He added that good communication between Planning and Enforcement is important.

Ms. M. Murrell stated that this issue was deemed to be important when the review of the Unit was taking place. She added that there was logic for the Planning Enforcement Unit being under the Planning umbrella yet there was also valid reasons for keeping it separate. She stated that there was a formal structure in place where the Environmental Enforcement Unit and Planning Enforcement were meeting monthly.

Cllr. A. Thornton asked if these meetings were general or do they discuss individual cases.

Ms. M. Murrell, Chief Executive stated that they discuss policy in general and also individual cases.

Mr. C. O'Sullivan added that the Council were still in the process of developing the Unit and Kerry County Council were not the only Local Authority where planning enforcement comes to the fore from time to time. He added that the complaints lists are reviewed on a monthly basis and they are gone through to try and minimise the risks associated with proceeding with same.

Cllr. D. Healy-Rae stated that as elected members of Kerry County Council they respect the rules and decisions made by the Local Authority. He added that there were a number of issues where the Planning Authority granted planning permission and the site was subsequently assessed by a planning official following complaint and it was found to be compliant yet when these decisions were challenged in court by 3<sup>rd</sup> parties the Council lost the case. He questioned how this was happening.

Cllr. D. Quigg asked does the Building Control Unit take over once permission is granted and are staged inspections of new developments taking place.

Mr. J. Breen stated that the Building Control Unit do building inspections of approximately 20% of properties but it is on a risk basis. He added that it was not financially possible to inspect all buildings at all the stages of development.

Cllr. D. Quigg asked if it would be possible for Kerry County Council to lead the way on employing Clerks of Works for continual inspection of buildings in the course of construction. He added that he did not want to see a situation where the County had a lot of ghost and unfinished housing estates in the future.

Mr. C. O Sullivan stated that the purpose of the new Building Control Regulations was to support purchasers by enabling them to assume compliance in terms of the Planning Acts. He added that consideration is presently being given to putting an inspection process in place for housing estates. It is a matter for the Building Control Unit to ensure that the new Building Control Regulations are complied with.

Cllr. D. Quigg asked that this Local Authority look at the Clerk of Works model. He had built his own house and added that he got very little visits from his engineers. He added that a more vigorous approach was needed.

Ms. M. Murrell, Chief Executive referred to a Notice of Motion by Cllr. M. Gleeson a number of months ago wherein he had asked for an inspection regime to be put in place and she added that a positive response had been given by the Council at that stage. She added that consideration was being given to this request.

Cllr. P. Connor-Scarteen said that the new Building Control Regulations require certification by a qualified person and an engineer/architect must sign off on at least five different occasions. He stated that it was a positive step that Material Contraventions were now brought before the Municipal District Meetings and he added that it should be stipulated that the Elected Members from the area must visit the site prior to considering it at the Municipal District meeting.

Cllr. M. Cahill stressed the importance of the Planning Enforcement Unit. He concurred with the views that it is beneficial to have the Material Contravention process dealt with at Municipal District level. He welcomed the proposed greenway projects which are to be constructed on the old railway lines however, he said in some cases alternative routes are available and these should be considered.

Cllr. J. J. Culloty concurred with Cllr. P. Connor-Scarteen and added that the new structures are robust and should be more than adequate. He asked if it is a statutory requirement that there is a clear separation between Planning Enforcement and Planning Development. He believed it is important that planners would have a say in planning enforcement.

Mr. C. O'Sullivan stated that the separation of Planning Enforcement and Planning Control was not governed by any legislation however, it was good corporate governance. He accepted that there must be consultation between the departments.

Cllr. G. Spring asked that the presentations would be emailed to members and asked how long it took the Council to investigate a complaint and if there was a delay in sites being visited. He asked if there needed to be a number of cases requiring investigation in an area before the planners visited the area.

Mr. C. O'Sullivan stated that it depended on the nature of the complaint. He said that if the complaint is of a serious nature it is visited immediately otherwise the Enforcement Officers go out once or twice a week.

Ms M. Murrell stated that all complaints must be investigated within a 6 week timeframe.

Cllr. A. Thornton stated that the Planning and Development Acts were loaded with powers for the Local Authority and the Elected Members and to enable her to best serve her constituents it was important for her to stay until the end of the meeting. She thanked the officials for their Briefing and added that an in committee meeting should be held to discuss the other issues.



Cllr. J. Sheahan stated that he had dealings with the Enforcement Unit and had found them to be professional and the issues were resolved. In the past the Local Authority liaised with lending institutions but these institutions did not engage in the process and this proved very frustrating. He referred to the Glenbeigh to Mountain Stage Greenway Project and said that there were a number of landowners here working on lands in the immediate vicinity of the railway lines daily via tractors or on foot checking their cattle and sheep and that the Council needed to liaise with these people as they do not have alternative means of accessing their lands. He added that there are other routes just as beneficial and he urged the council to work with these landowners.

Ms M. Murrell, Chief Executive stated that she was unaware of the issue raised by Cllr. J. Healy-Rae in relation to the sale of houses by the banks and added that if a house is in an area of family ownership that should continue to apply.

Mr. P. Stack, S.E. Planning stated that in general terms the Banks wont give a loan if the 7 year occupancy clause is a condition on the planning.

The meeting concluded at 5.05pm.

**Gerard O'Brien**  
**Meetings Administrator**

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**Cathaoirleach of Kerry County Council**