

COMHAIRLE CHONTAE NA H-IARMHÍ
WESTMEATH COUNTY COUNCIL



Guidelines for Purchasers in Residential Developments



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1.0 Introduction

The purchase of a home is one of the single biggest financial, legal and emotional events of a person's life. Any mistakes made at this time can have lifelong consequences for the people concerned. This document serves as a general guide to house purchasers where the property concerned is part of a larger residential development. It outlines Westmeath County Council's policy in relation to the planning issues, private dwelling requirements and taking in charge of private housing developments.

The issues, certifications and investigations, etc. raised in this booklet are intended to inform the purchaser of a residential property of the wide range of planning and related requirements involved in the purchase of a house. Many of these checks, investigations, etc. will be carried out by the purchaser's solicitor on his/her behalf. It is not intended that the purchaser him/herself should have to carry out these checks personally but he/she can discuss these with their solicitor in the course of the legal and other transactions carried out by the professional legal representative.

2.0 Planning Issues relating to Housing Developments

2.1 Planning Permission

The purchaser should satisfy himself or herself that the following items are addressed and be aware of how these or any other planning conditions may have an impact on their proposed property:

- a) The development is an authorised development i.e. it has planning permission.
- b) All development contributions have been paid in full.
- c) All connection fees have been paid in full and that the developer has a licence to connect to the public watermain and sewers where applicable.
- d) All other conditions have been complied with, these may include conditions relating to
 - Site Boundaries
 - Street Lighting
 - Services
 - Landscaping
 - Wayleaves
 - Special conditions, e.g. Open plan front gardens, Restrictions on converting a garage, etc.
 - The establishment of a Management Company, or retention of the services of an existing Management Company, to maintain that section of the development for which it was proposed/required.

2.2 Planning Enforcement

Enforcement for non-compliance with planning permission is dealt with under Part VIII of the Planning and Development Act, 2000. Enforcement proceedings may be undertaken, should they be required, even if the development is not to be taken in charge. Unless the conditions attached to a particular planning permission specifically state otherwise, there is no timeframe for completion of a particular element of a development other than it has to be complete prior to the expiry of the planning permission as a whole. If the purchaser has a concern as to when specific elements of a development (i.e. roads, footpaths, public lighting and open spaces) adjacent to the property in question will be complete/operational these should be clarified within the contract of sale.

House purchasers should note that once they buy a property within a development they then have a legal interest in the development and under Section 154(3)(a) of the Planning and Development Act, 2000 they may become subject to planning enforcement proceedings should elements of the development be non-compliant.

3.0 Private Dwelling

It is the responsibility of the developer/builder to ensure that the dwelling complies with the Grant of Planning Permission, the current Building Regulations, Health & Safety Legislation and the requirements of any other third party service provider that may be appropriate at the time of sale. It is the responsibility of the purchaser's solicitor/engineer to ensure that they are satisfied that the developer/builder has discharged his responsibilities fully.

3.1 Planning Permission

The Council would advise that prior to purchasing a dwelling, the purchaser seek and be furnished with a certificate from a Consultant Engineer/Architect, who is covered by the appropriate level of Professional Indemnity Insurance, to certify that:

- a) The dwelling has been constructed in accordance with the grant of planning permission.
- b) The dwelling and any other items within the curtilage of the property, such as boundary walls, are structurally sound.
- c) On site storage has provided for at least 24-hour water consumption and all water used in the property except that for drinking is drawn through storage.
- d) Each property has its own individual service and that a Domestic Control Unit is installed in accordance with the Westmeath County Council Specification. These shall be located outside the curtilage of each individual dwelling site.

The sequence of installation is as follows: Watermain → Control Unit → Stopcock → House

- e) A non-return valve has been placed on the water service just inside each building.
- f) A separate stopcock or shut-off valve has been fitted within each dwelling.
- g) That only foul water is discharged to the foul drainage system and that all the surface water is discharged to the separate surface water system.
- h) That the building complies with the Building Regulations that are current at time of construction.

In the case where the Engineer's/Architects certificate excludes any of the above items the purchaser should get written confirmation, to his/her own satisfaction, from the builder to indicate compliance.

3.2 Building Regulations

In general, Building Regulations apply to the construction of new buildings, extensions to existing buildings and material alterations to buildings. In addition, certain parts of the Regulations apply to existing buildings where a material change of use takes place. Otherwise, Building Regulations do not apply to buildings constructed prior to 1st June, 1992.

The Council would advise that prior to purchasing a dwelling, the purchaser seek and be furnished with a certificate from a Consultant Engineer/Architect, who is covered by the appropriate level of Professional Indemnity Insurance, to certify that the dwelling complies with the Building Regulations.

Brief summaries of the individual parts of the Building Regulations are as follows:

- **Part A:** Structure - Sets out the minimum standards for design and construction of the structural elements of a building.
- **Part B:** Fire Safety - Sets out the minimum standards for design and construction of a building with regard to containing fire within a part of the building, the safe means of escape for the occupants in the event of a fire, the provision of facilities for the fire service and preventing the spread of a fire to adjacent buildings should one start.
- **Part C:** Site Preparation and Resistance to Moisture - Sets out the works to be undertaken on site prior to construction commencing, the requirements with regard to the drainage outside the building and the requirements to prevent moisture getting into a building. It also deals with the steps to be taken with regard to dangerous substances such as Radon. In areas of high radon, a sealed radon membrane is required under the ground floor and a method of extracting radon from the substructure using a sump is required. In areas outside high radon areas, the membrane is not required but the sump is still required. In Westmeath, high radon areas are in North Westmeath including Coole, Castlepollard, Fore, Collinstown, Multyfarnham, Crookedwood, Drumcree, Delvin, Clonmellon and Raharney, West of Mullingar including Rathconrath and Ballynacarrigy, around Tyrrellspass, and in the Moate area including Moate, Castledaly and Ballinahown.
- **Part D:** Materials and Workmanship - Sets out the minimum standard of both the materials used and the quality of work that a builder must meet when constructing a building.
- **Part E:** Sound - Sets out the minimum standards for design and construction of a building in order to achieve the minimum level of sound insulation both within the dwelling and between individual dwellings in the case where they abut each other.

- **Part F:** Ventilation - Sets out the minimum standards for design and construction of a building to ensure the various areas within it are adequately ventilated.
- **Part G:** Hygiene - Sets out the minimum standards for the design and construction of bathrooms, kitchens, toilets and washing facilities in a building.
- **Part H:** Drainage and WasteWater Disposal - Sets out the minimum standards for the design and construction of the drainage system for a building.
- **Part J:** Heat Producing Appliances - Sets the minimum standards for the design and construction of both the apparatus that is installed to heat the house and the requirements for their installation in the building. In Westmeath, the maximum chimney height from the highest point of intersection with a roof is 4.5 times the least horizontal dimension of the chimney.
- **Part K:** Stairs, Ladders, Ramps and Guards - Sets out the minimum standards for design and construction of any part of the building where there is a difference in level to be catered for. This part outlines the requirements for safe access between the different levels and the protection from falling of people or vehicles.
- **Part L:** Conservation of Fuel and Energy DWELLINGS - Sets out the minimum standards for the design and construction of a building in such a way as to insulate against heat loss.
- **Part M:** Access for People with Disabilities - Sets out the minimum standards for the design and construction of a building to ensure a person any disabilities, including those with impaired sight can gain access to and use a building. ALL new dwellings must comply with this part.

In the case where the Engineer's/Architects certificate excludes any of the above items the purchaser should get written confirmation, to his/her own satisfaction, from the builder to indicate compliance.

3.3 Health and Safety

Under current Health and Safety Legislation, on completion of each sale, relevant extracts of the safety file (i.e. relevant to the property being purchased) are to be given to each purchaser.

The safety file for a development is a record of information for the end user that focuses on safety and health. The information it contains will alert those who are responsible for

the building and services in it of the significant safety and health risks that will need to be addressed during subsequent maintenance, repair or other construction work. Relevant information, which could be included in the safety file, may include:

- a) construction drawings, specifications etc used and produced throughout the construction process;
- b) general design criteria;
- c) details of equipment and maintenance facilities within the building;
- d) maintenance procedures and requirements for the building;
- e) manuals, and where appropriate certificates, produced by specialist contractors and suppliers which outline operating and maintenance procedures and schedules for plant and equipment installed as part of the building, typically lifts, electrical and mechanical installations, gas and heating installations and window cleaning; and
- f) details of location and nature of utilities and services, including emergency and fire-fighting systems

The safety file should be kept in a secure place as it must be made available to any person who may need information contained in the file when maintenance or other construction work is to be carried out. If the property is subsequently sold the file should be passed on to the new owner.

3.4 Third Party Service Providers.

Due to the deregulation of the electricity market all developers now have to inform purchasers of individual properties of their unique M.P.R.N. (meter point reference number). The M.P.R.N. is the method by which householders register with their electricity supplier who can then request ESB Networks to make the connection to the unit live. It should be noted that the M.P.R.N. is not the customer reference number.

It is advisable to check that in the interest of equality of treatment to all service providers the developer/builder has afforded all operators in the market, who are capable of providing a service, the opportunity to acquire access to the individual dwellings on an equitable basis. This would not be possible if one provider, e.g. Eircom, provided the infrastructure. The developer/builder may have provided some infrastructure at his own expense for the use of any other as yet unidentified operator in the future. This may lead to lower installation costs should the householder opt for a different service provider in the future.

4.0 Taking in Charge of Developments

Taking in charge of a development is the process whereby the Council takes over the responsibility for the maintenance of roads, public lighting, water mains and sewers from the developer.

Section 180 of the Planning and Development Act, 2000 deals with the taking in charge of estates by the Council. Where the development consists of two or more houses and involved the construction of roads and services to facilitate the houses then, subject to it being completed to the satisfaction of the Council, it shall be taken in charge when formally requested to do so by the developer.

In order to be considered for taking in charge a development will have to be fully compliant with the conditions attached to the grant of planning permission and meet the technical requirements of "Taking in Charge Policy for Private Housing Developments" published by Westmeath County Council. Any bond or security lodged with the Planning Authority will not be released until the satisfactory completion of the development.

Some developments, or parts of a development, will not be taken in charge. Certain types of housing developments (e.g. apartment complexes and duplex units etc.) where it is proposed that they will not be taken in charge will have a condition in the planning permission that a properly constituted Management Company be established for the purpose of maintaining the roads, footpaths, parking areas, public lighting, services and open spaces within the development. If a Management Company is proposed for a development, or part of 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 set down by the Council. 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.

4.1 Prior to Taking in Charge

Responsibility for maintenance of the elements of a development (i.e. roads, footpaths, public lighting, water mains, sewers and open spaces) remains with the developer until such time as the Council take them in charge. The developer is also responsible for such items as Health and Safety, road cleanliness, traffic calming, dust, material damage, injury etc. within the curtilage of the development.

4.2 What parts of a development are taken in charge?

The following elements of the appropriate housing development/part of a housing development will be considered by the Council for taking in charge:

a) Roads and Footpaths

The roads and footpaths have to meet the technical requirements of the Council prior to taking in charge, this includes signage (as per DoEHLG guidelines). The erection and maintenance of all regulatory signage, e.g. STOP, YIELD, RAMP AHEAD, Speed Limit signs etc, will be the responsibility of the developer prior to taking in charge and the responsibility of the Council after taking in charge. Once a development is taken in charge the erection and maintenance of additional information signage, e.g. Children at Play, Neighbourhood Watch etc, is a matter for the Residents Association following receipt of a permit from the Council.

b) Public Lighting

There is a provision within the County Development Plan whereby the Council can take the public lighting in charge in advance of the development as a whole. This can be done in phases for a large development and is at the request of the developer. It is done in the interest of public safety in an effort to get developers to erect and connect lighting to phases of developments, as they become occupied.

c) Water mains

The water main and the service connection for each house shall be taken in charge up to and including the stopcock in the public footpath. The householder will be responsible for the service pipe from the stopcock in the public footpath to, and including, the internal building system.

d) Sewers

The Council will take only main sewers in charge. The house purchaser should request a drawing of all services within the confines of their site. If it is the case that there is a drain serving more than one house running through the property to the main sewer the issue of right of access and maintenance or repair should be dealt with in the deeds of all houses affected. The issue of the division of costs should a problem arise should also be addressed within the deeds/folio.

In the case of some developments there may be no public sewer network to connect to and permission for a small communal treatment plant may have been granted. In this instance the purchaser should satisfy himself or herself that the following is the case so as not to contribute to an environmental/public health hazard and make themselves a party to any potential prosecution:

- i. Where a private treatment plant is installed, it is a requirement of Westmeath County Council that a properly constituted Management Company be established for the purpose of maintaining the foul sewers, treatment plant and any ancillary plant/equipment.
- ii. The developer has obtained a discharge licence from the Environment Section of Westmeath County Council and that the treatment plant is operated in accordance with the conditions of the discharge license.

Small treatment plants serving more than one house may, at the discretion of Westmeath County Council be taken in charge with the other elements of the development should it meet the requirements set down by the Water Services Section.

e) Open Spaces (including boundary walls/fences between open spaces and public roads)

It is the policy of Westmeath County Council that the maintenance and upkeep of the open spaces remains the responsibility of the residents of a development. The Council provide various grants, waiver schemes, allocations of trees and advice from parks section to recognised Residents Associations to facilitate the maintenance. Boundary walls between private property and public open space/road remain the responsibility of the householder. Once taken in charge the erection of items such as goalposts, information signage etc. are a matter for the Residents Association following receipt of a permit from the Council.

4.3 Taking in Charge not requested

In the case where the developer does not request that the estate be taken in charge then a majority of the qualified electors who own or occupy the houses in the development may request that the Council take the estate in charge subject to it meeting the required standard and being in compliance with the conditions attached to the grant of planning permission.

5.0 Sources of Information

This information booklet was compiled from documents/sources including:

- Planning and Development Act, 2000,
- Westmeath County Development Plan, 2002 to 2008,
- Taking in Charge Policy for Private Housing Developments, June 2005 published by Westmeath County Council,
- Safety, Health and Welfare at Work Act, 2005,
- Guidelines to Parts I, II and III of the Safety, Health and Welfare at Work (Construction) Regulations, 1995 (S.I. 138 of 1995), July 1999 published by Health and Safety Authority,
- Building Control Act, 1990,
- Building Regulations 1997 to 2004,
- Building Regulations Technical Guidance Documents,
- Briefing Note for Builders and Developers on Changes in Electricity Connection Process Arising Out of the Opening of the Electricity Market on 19th February 2005, April 2005 published by ESB Networks for Irish Home Builders Association,
- Access Duct Network Policy for Housing Developments, Proposal for preparing Draft Policy Document, February 2005, by Magnum Opus for Westmeath County Council.

Westmeath County Council wish to stress that this document is for guidance only and is not a legal interpretation of the legislation quoted within it. No person should commence any legal action on foot of the information herein without firstly obtaining considered legal advice on the relevant legislation applicable.

