

Feasta, Foundation for the Economics of Sustainability

Critique of Part V of the 2000 Planning and Development Act

13/09/2002

It can happen that, while concentrating on one area of concern in a piece of legislation, the Government fails to recognise the impact on or relationship to others. This is the case with Part V of the 2000 Act which has laudable aims of addressing social exclusion and housing affordability but which has overlooked important economic and environmental considerations and has failed to consider its very different impact on rural versus urban areas. The following paper examines and critiques Part V of the 2000 Act under Feasta's focus of sustainability using environmental, economic and social criteria. The Government is required to deliver sustainable development as expressed in Sustainable Development, A Strategy for Ireland 1997 which outlined national objectives related to the UNCED Summit at Rio in 1992 and reiterated again at the WSSD at Johannesburg. We are faced with the choice of building-in sustainability or unsustainability into 500,000 new homes over the next ten years. There is no higher priority issue facing the government at the beginning of its term.

The paper is necessarily broad ranging. The purpose is to sketch the overall form of a sustainable housing strategy in the Irish context. The suggested changes can be carried out in the order described. Obviously, the *home benefit* and *site value tax* proposals need a carefully managed transition period and the levels of taxes and benefits need further research and modeling. But Feasta believes these fiscal tools would prove invaluable to the government in the context of expected slowed economic growth and a consequential fall in house prices.

In brief our main recommendations are: -

1. The remit of Part V of the Act should be extended to cover all categories of zoned and non zoned land in the context of 'proper planning and *sustainable* development'
2. An *annual development site* tax on the site value of development land triggered on zoning or granting of Planning Permission should replace the existing provisions of Part V triggered on development.
3. The *annual development site* tax receipts should be ring fenced (hypothecated) and made available to local authorities (and through them to the housing association, co-operative, community company or trust etc) to support the *land element* of purchase of community-owned housing and facilities at *market value*.
4. The *annual development site* tax should be nationally set and applied as an even percentage throughout Ireland of the increased value of the land due to zoning or granting of Planning Permission, replacing the Housing Strategy provisions.
5. The 'affordable' designation should be changed to '*community-owned*' and should provide *not-for-profit rented* housing for a range of social categories and income groups.

6. Housing benefits should be paid on the basis of a single *home benefit* system which could be used to pay rent to a local authority, housing association, co-operative or private landlord and even replace mortgage interest relief.
7. A gradual shift from income taxes to an annual *site value* tax on all property including residential is necessary for intergenerational equity, mitigation of property price cycles and efficient use of land.

1. Exclusions to Part V Foster Unsustainable Rural Settlement Patterns:

Part V of the 2000 Act only covers existing residentially zoned land. It does not cover land currently in agricultural use in open countryside that is under development pressure for one-off housing, nor does it cover groups of less than four houses in areas zoned residential, nor local authority and social housing estate development, nor non-zoned land in and near towns and villages subject to development pressure for housing estates nor all land zoned for non-residential uses. This is a major flaw with many negative consequences.

1.1 Part V reinforces the pressure for urban generated one-off housing in the countryside as the site owners of such housing are not required to contribute to affordable housing in contrast to the owners of housing sites in zoned villages and towns. This represents a subsidy to the one-off site seller or owner and disincentive build or buy in existing rural settlements which are subject to the Act. There is already a substantial economic incentive and benefit to land and house owners of one-off housing over urban housing (to the tune of €810 million per annum according to Convery et al in *After the Celtic Tiger*), which cannot be justified, in social redistributive terms. Part V reinforces this economic incentive to build in the rural countryside.

1.2 As up to 80% of all housing in some rural counties is one-off in the countryside it leaves a greater percentage of affordable housing to be built in the existing villages and towns. There is already evidence of the hollowing out of existing rural settlements and their abandonment by the middle class. This trend repeats the faults of urban social housing in rural areas, faults which Part V sought to address, that of ghettoisation of the socially excluded in single class areas.

1.3 Most smaller villages and towns lack Area Plans and thus specific zoning for residential (beyond a broad requirement that land within the speed limit signs on approach roads may be considered for development). There is anecdotal evidence that some developers are targeting such sites to avoid the Part V provisions for social and affordable housing. This puts further pressure to site an undesirable high percentage of social and affordable housing in those towns that are zoned reinforcing the tendency towards social exclusion.

1.4 No requirement to provide mixed housing for sale or for rent is placed on local authorities and housing associations where they are lead developers and owners of land.

It is difficult to see why social mixing is seen desirable and necessary for private developers to provide but not so for public and social developers. Again, this anomaly will reinforce the tendency to build single class estates in cities and rural towns where local authorities have substantial land banks.

1.5 The exemption of non-residential uses from Part V creates a situation where some landowners and developers are singled out to contribute to community need where others are not. There is no clear reason why this should be so. Experience has shown us that sustainable communities require more than the mere provision of affordable shelter even in a socially mixed estate. They require integrated social and cultural facilities, proximity to work places, good accessibility to services, play spaces for children, community gardens, landscaping and nature reserves to preserve biodiversity and to provide recreational amenities. The clear absence of such mixed and balanced uses in new urban and rural developments indicates that developers will not plan and build for long term sustainability without effective incentives and penalties.

Recommendation

The remit of Part V of the Act should be extended to cover all categories of zoned and non-zoned land in the context of ‘proper planning and sustainable development’.

Mixed uses are required to meet internationally agreed standards of settlement sustainability, including our Kyoto targets.

This extension would apply the principle of capturing development value for the public good in a fairer way thus protecting the provisions of Part V from legal challenge in a particular case.

The economic incentives for one-off urban generated rural housing would be partially reduced. In parallel, the tendency to reinforce social exclusion in some rural towns would be partially reversed.

2. The Method of Capturing Land Value is Counterproductive

The requirement of contributing 20% of the housing development land area to the Local Authority at previous use value or an agreed percentage of the completed social and/or affordable units in lieu, is a very blunt instrument to capture land value to benefit the community. It impedes supply and leads to unfair exemptions. Furthermore the illiquidity of this mechanism can cause cash flow impediments to the take-up of the land or completed housing by local authorities.

2.1 The provision of Part V only applies at the point development commences; - so in effect landowners have the option of *not* commencing development. We have seen a considerable slowdown in housing development in some areas of the country as a result

of the Act that has led to a decrease in housing supply and thus an increase in housing prices. This cannot have been the intention of the legislative draftsmen. An increase of development land supply should have been a central objective of Part V as it would lead inevitably to a decrease in house prices for everyone; - not just the lucky new owners of 'affordable' housing.

2.2 The mechanism for capturing community value excludes one-off house owners and small developers. It is obviously impractical for the local authority to capture land value by taking site area where the site is small. There should be provisions for small developers to give the local authority the equivalent value in monetary terms to ensure equity and to prevent the unintended consequences as outlined in Point 1.1

2.3 Although the land transfer at the discounted price has real value for the local authority, it has to pay up front sums to the landowners for the land, particularly to those developers who bought before the designated date. 20% of all housing land bought after the designated date under development each year represents, even at agricultural prices, a considerable cost to the national exchequer where there is no balancing receipts. In the case of agreements to provide a number of completed affordable and/or social housing (a more common outcome), the costs to the national exchequer to purchase or build them represent a huge financial commitment. With public finances coming into a leaner period, this financial burden will inevitably lead to local authorities being unable to complete their agreements with developers thereby losing much of the benefit of Part V. Recent newspaper reports confirm this (Sunday Tribune 15th September).

Recommendations

An annual development site tax on the site value of development land triggered on zoning or granting of Planning Permission should replace the existing provisions of Part V. This would overcome the problem of land withholding and hoarding of development and sale-based taxes.

Such an *annual site development* tax could be carefully set to reward prompt development, deter speculative activity and discourage large land bank holding for future development by housing developers. It should be levied as a charge against the land, which could be recouped on sale if it is not paid annually. Such a tax could replace the Derelict Sites Tax as it essentially performs the same function.

Non zoned land would be not be exempt as the granting of Planning Permission should trigger the immediate payment of a tax representing at least 5 years of the *annual development site* tax. This is to reflect the fact that the zoned land is considered more optimal for development therefore there is an implied loss in efficiency to develop non-zoned before zoned land. It is also necessary to disincentivise applications on non-zoned land.

It would serve as a very effective planning tool to ensure compact development and obviate the need to over-zone to ensure adequate supply. Finally, it would serve to

reduce pressure on elected representative to zone less than optimally sited or premature land, as the tax would be due immediately the zoning is passed.

An *annual development site* tax on development land has the further benefit of providing cash flow for the government / local authority to contribute to the purchase of land or facilities or completed housing when needed. Developers would be required to provide needed housing, other mixed uses and/or community facilities as part of their Planning Permission according to proper planning and sustainable development criteria in the normal way.

The *annual development site* tax receipts would be ring fenced (hypothecated) and made available to local authorities (and through them to the housing association, co-operative, community company or trust etc) to support the *land element* of the purchase of community-owned housing and facilities at *market value*. In this way, the intent of the Part V is maintained that is- to provide land at existing use value for community need, but it is delivered in a fairer, more balanced and flexible way.

The most positive outcome of an annual site value tax is that the market value of development land will drop for two reasons; - the annual tax burden would be immediately capitalised in a reduced value for the land and secondly and more importantly, more land would come on the market because of the extra cost of holding it. More development land on the market will increase supply, reduce competition thus reduce sale prices. As most of the increase in house and apartment prices over the last eight years is due to the increase in the *site* costs of each unit, a decrease in land prices across the board will result in more 'affordable' housing for *all* income categories.

3. The Reliance on Local Housing Strategies to Determine the Developers Contribution is Confusing and Restricting.

Differing housing need and difficulties in assessing it in different local authority areas has caused much confusion and uncertainty and has led to apparently arbitrary differences in the contribution required of landowners. Furthermore, the DoELG guidelines for the housing strategies do not take regional and national strategic planning sufficiently into account.

3.1 While we support the requirement for local authorities to plan strategically to deliver their housing responsibilities, the current guidelines ignore important housing sustainability needs not related to costs such as the need for flexibility in location and tenure and proximity to services and workplaces. Even accepting the current guidelines, statistical information is frequently not available nor in the right formats for local authorities to produce a useful Housing Strategy. Particular difficulties present in assessing numbers and prices for the 'affordable' housing element.

3.2 One has to question whether assessing housing need by local authority area makes sense where the draft National Spatial Strategy recognises a population and development imbalance between the Dublin region and the rest of the country. The National Spatial Strategy (due to be published shortly) is very likely to restrict development in some areas and promote it in others. A set of local Housing Strategies based substantially on existing need will not advance this objective.

3.3 While accepting the overarching objective of mixed local development, there are considerable advantages in de-coupling the contribution of the landowner from the level of local need, which varies considerably in location and time. It would provide a more predictable environment to developers in bidding for land; - an important factor in stimulating production and would give more flexibility to the local authority to direct provision to areas it was most needed, improving existing settlements for instance.

Recommendation

The *annual development site tax* should be nationally set and applied throughout Ireland as an even percentage of the increased value of the land due to zoning or granting of Planning Permission, replacing the Housing Strategy provision.

The receipts should then be allocated to local authorities according to National Spatial Strategy objectives.

As too much land is currently zoned and not all of it is serviced, landowners should be able to apply for it to be de-zoned. Or they may opt to forgo their development rights by giving or selling them to the Local Authority or a Community Land Trust.

4. The 'Affordable Housing' Category Causes More Problems than it Solves

The category of 'affordable housing' in the Housing Strategies reifies existing unacceptable house price inflation and needlessly creates a second 'housing list' with the attendant problems of its administration and allocation.

4.1 The 'affordable housing' category recreates all the problems associated with local authority housing and its problematical points system. The benefits of qualifying for the 'affordable' house is sufficient to distort behavior; - discouraging marriage and full time work in the qualifying period. The claw-back of some of the land value of the house on sale, while necessary for fairness, will discourage mobility to the disbenefit of the housing owner and wider economy. The method for allocating the houses is not yet clear but it is certain that it will increase the clinic caseload of local representatives and place enormous pressures on housing managers in local authorities.

4.2 The introduction of a category of 'affordable' housing in itself begs the question about the remainder of the housing rendered by definition 'unaffordable'. It will be perceived that the 80% in the latter category will have partly paid for the former. While

this may be true in the short term where developers have already paid for their land, in the long term the cost will be factored into land price. This distinction is bound to cause strains between housing categories within the new residential community as these schemes come on stream.

Recommendation

The ‘affordable’ designation should be changed to ‘community-owned’ and should provide *not-for-profit rented* housing for a range of social categories and income groups.

This category is not limited to local authorities and housing associations catering for low income and special needs but should also include not-for-profit rental co-operatives, trusts and co-housing groups catering for mixed income and age groups. The receipts from the *annual development site* tax would be made available through the local authority to subsidise the purchase of land or completed units or facilitate tri-partnership development (public/private/not-for-profit). It follows that to retain the value in the community, the benefiting rental housing including local authority housing should never be sold at a discount to private interests.

Residential mobility between sectors and local authorities is ensured while the rental sector is expanded in a way that ensures affordability for tenants of all incomes.

Rents in the private rental sector will lower as the not-for-profit units compete with them;
- without the need for an elaborate regulatory framework.

With secure, affordable rented accommodation available for a wide cross section of society, the demand for house purchase will slow to allow supply to meet it at sustainable price levels. Feasta defines sustainable house prices as those which allow full family life i.e. sufficient non earning family time is available to have and enjoy the care of children and contribute to community life.

5. Rights versus Needs Based Supports and Subsidies

A housing subsidy policy based on social need causes social differentiation and dependency over time that becomes ingrained over generations. This social isolation is compounded when the support is embodied in buildings and grouped in distinctive estates. Part V of the 2000 Act seeks to address the second part of this dilemma but it does not address the first.

5.1 Local authority housing has played an impressive role in addressing poor living conditions and appalling slums since the establishment of the State. This task is substantially complete but housing policy has hardly changed to reflect contemporary challenges. Now relative measures of poverty are uppermost, as absolute levels have thankfully diminished. This relative poverty is reflected in difference and exclusion from full social, economic and cultural participation. Local authority housing is now built in

smaller estates but it is still distinctive and separate from other housing types. Part V unmodified is unlikely to change this situation rather it is likely to exacerbate it in rural areas (see Point 1.). The sale of council houses to tenants at heavy discounts depletes total community housing stock and creams off the most desirable housing in the best locations to leave the rest even more isolated. It also provides perverse incentives for local authority housing applicants to hold out for a house as opposed to an apartment, which are excluded from the tenant purchase scheme, even where an apartment is more appropriate to their needs.

5.2 The advent of housing associations in the last 30 years held out promise to provide socially mixed rental accommodation along the European model. The application of DoELG housing subsidy programmes in the context of a scaled back local authority housing programme blocked this aspiration. However, the housing association grant and subsidy system is more transparent and cost effective in terms of management and maintenance and there is no obligation to discounted tenant purchase. Its main success has been in the provision of sheltered housing for special needs and in developing successful participative local estate management programmes throughout the country. But the associations are obliged to take too high a percentage of tenants from the local authority housing list to achieve a balanced social settlement. Housing association developments have become housing of last resort like local authority housing before them and are beginning to suffer from many of the same problems.

5.3 Rental subsidies were introduced to make up the shortfall of affordable rented housing administered firstly by the Health boards and now by local authorities. This benefit was the first to be given directly to the recipient to make up the shortfall between market rents and their means. It was never regarded as more than a stopgap measure as evidenced by the lack of developed regulatory framework to ensure acceptable standards of conditions and management. Lack of secure tenure and inflation in rent levels has bedeviled the private sector with particular effect on vulnerable rental subsidy recipients. This has limited its potential to significantly contribute to a sustainable accommodation strategy. Worryingly, as rental subsidies now make up a large proportion of all private sector residential lettings, there are reasons to fear that they are artificially inflating rent levels at the lower end of the market.

5.4 Other housing supports and benefits are spread over wider social groups. The first time buyers grant for instance applies to all first time house buyers regardless of income. Tax relief on the interest element of a house mortgage applies to all homeowners and indeed following recent fiscal reversals, to owners of investment property. Homeowners are exempt from Capital Gains Tax on the sale of their principle residence. There are also capital allowances for various categories of housing; -, living over the shop schemes, student accommodation and rural housing in some parts of the country. The homeowner subsidies are substantial over the life of the recipients and recognise to some extent, housing supports as 'a right' as opposed to 'need'. The subsidies to support investors recognise the important ability of the private rented sector to quickly and flexibly short-term demand but they are politically unpopular in certain sectors because they also benefit the wealthy.

Recommendation

Housing benefits should be paid on the basis of a single *home benefit* system which could be used to pay rent to a local authority, housing association, co-operative or private landlord and replace mortgage interest relief.

Feasta suggests that the social supports for housing should not be expressed in housing form as it exacerbates social inequality and limits choice. The social house and the social subsidy recipient should be de-linked. Local authorities should continue to design, build or commission dwellings as they have done to a high standard over the years, but they should do so for every social group, not just the needy; ditto for Housing Associations.

Housing benefits should be paid on the basis of 'right' not 'need' which could be used to help pay a mortgage or rent to a local authority, housing association, co-operative or private landlord. Rents can then reflect the true economic costs of providing the accommodation in the public and not-for-profit sector and the open market price in the private sector. Competition and synergies between the three sectors will allow each to play to their particular strengths, balancing their weaknesses while maximising individual freedom.

The Earth's natural resources are humanity's birthright and for sustainability, this birthright must be shared equally. The *home benefit* recognises this right to use an equal share of natural resources but a corresponding obligation exists to pay for using more than that share. This obligation/ payment is also an absolutely necessary part of a feedback system to prevent the market from simply capturing the value of the *home benefit* in higher rent and land prices and is discussed in Point 6 below.

6. Intergenerational Inequity in Housing Costs and Choice

Part V of the 2000 Act does not address a growing and largely un-recognised threat to sustainability; - that of intergenerational inequity. The contemporary measurement of wealth on the basis of income conceals the disparity between the quality and choices of housing of the cohort over fifty years of age compared to those under twenty-five. This imbalance is reflected in estates that are often characterized by families from a single life stage.

6.1 The rising value of our land and property has been bought with the long-term indebtedness of the young. Two incomes over 30 years are now necessary to buy a very modest house; - in some parts of the country it is not even enough. Twenty-five years ago, one income over twenty years could do the same. Forty years ago one income over eight years was that was all necessary. Families are forced into long commutes from cheaper housing locations to places of work. This is a theft of time as well as income. These remoter housing estates are full of families with young children and other more central estates are full of the old and retired. Along with isolation, young couples have

less time to have raised children, look after the aged or to devote to community activities. Social capital on which economies depend is thus eroded to the disbenefit of all.

6.2 The benefits of low interest rate brought by the Euro, which have partly fueled the price rises, have been offset by lower wage inflation rates in the recent past. Inflation used to have the benefit of reducing the burden of housing debt because as income increased, the capital repayment stayed the same. The inflation we suffer now is caused by asset prices not income. But this inflation bubble is about to burst with a slowing economy and a drop in housing prices is almost inevitable. The impact will be more severe on those who have bought recently, the wealthy (usually older) will be able to snap up bargains as Building Societies and Banks force sales. The consequences will be severely socially destabilising and threatening to all efforts to effect sustainability.

6.3 The increase in house prices is largely due to the increase in the value of the land or site of the house. This relates to the fact that as they say “ they are not making any more of it” and certainly not in the same location. So land uniquely has the ability to capture wealth created by the community’s investment and energy. Part V attempted to capture some of this value back for the community for new houses. But the site value continues to rise after development with economic growth, less dramatically than with zoning but nevertheless steadily, which is now captured by the homeowner without any risk or effort on his part. Location, as estate agents will tell you, determines value more than any other factor. So the unsustainable price of housing is not all caused by greedy developers and speculators but by all of us sitting pretty on a rising site values.

6.4 The absence of taxes on the value of their homes has discouraged people from downsizing when their children have fled the nest. This holds true also in local authority estates where the rents are computed on family earning power rather than the attractiveness of the housing. As family homes are also exempt from Capital Gains Tax, trading up the property ladder is used as a way of building wealth rather than finding a better fit to family needs. This can be seen particularly in rural areas where a significant proportion of urban generated new single houses is very large, ‘trophy’ houses that do not correspond with contemporary smaller family sizes.

Recommendation

A gradual shift from income tax to an annual *site value* tax on all property including residential is necessary for intergenerational equity, mitigation of property price cycles and efficient use of land.

On residential property, this tax transfers the burden from young families to those whose needs are less and natural capital assets are greater. Parents are increasingly willing to re-mortgage their existing high value houses to help out their children with deposits to buy a new home. This trend fuels further price inflation making higher transfers necessary and so it goes on. A tax on *site value* of the house achieves the same result *without* contributing to a price spiral.

The level should be set so that an individual living in a one bedroom apartment should pay very little if anything at all, while someone living in a centrally located three bedroom house with gardens should make a significant payment. Adjustment to the tax levels would allow governments to control house price bubbles. The supply of property on to the market would increase (as in the *development site tax*) thus contributing to a lowering of prices. The *site value tax* should be well flagged in advance and increased steadily to provide a greater and greater share of the total government receipts.

The site value tax should replace rates for non-residential uses, computed on the value of the site only, so that improvements or redevelopment will not increase the tax. Services should be paid for separately such as under the successful 'dual rate' system in some the US cities.

The mechanism to collect the *site value tax* must ensure an equal reduction in income tax for equity and for public acceptability. This might be accomplished through a matching allowance against income tax and company taxes. Only individuals and companies that earn less than the site value tax would have a net liability for the tax. Thus retired couples would be encouraged to downsize. Landlords would be encouraged to declare their rental income. Second homes would be discouraged.

The positive effects on the built environment would be dramatic- more compact and higher density development and the disappearance of empty and derelict property.

End

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Attn: Mary Moylan

24/09/02

Dear Mary,

I enclose a submission concerning Part V of the Planning and Development Act 2000 and sustainable housing generally for your information and review of the Act. Please consider it as a draft although it has already undergone some revision and is unlikely to be changed in any substantial way. It lacks worked examples to demonstrate the effect of the suggested changes but perhaps the DoELG is better placed to play with the figures. We trust that it will receive serious consideration despite its comprehensive recommendations.

We would be happy to meet to discuss any matter you want clarified,

Sincerely,

Emer O'Siochru