

Clare County Council Comhairle Contae an Chláir



Taking in Charge Policy For Private Housing Developments

REVISION HISTORY

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1. Introduction – Taking In Charge Policy

This document outlines Clare County Council's policy in relation to Taking in Charge (TIC) of private housing developments and has been prepared in accordance with Circular PD 1/08 issued by the Department of the Environment, Heritage and Local Government on the 26 February 2008. The policy was adopted by Clare County Council at its meeting on the 29 September 2008 and updated on 01 August 2019 to take into effect updated procedures with Irish Water. Failure to adhere to the Council's taking in charge policy will result in Enforcement Action.

2. Applications for Taking in Charge of Estates

Those Developers/Applicants who apply to Clare County Council for taking in charge of a housing scheme / residential development, under Section 180 of the Planning and Development Act 2000 (as amended) should do so in writing on the form ***P11 Taking in Charge Application Form (available on Council website <http://www.clarecoco.ie/your-council/forms/planning/>)***. This is normally done through the Developer's Architect/Agent/Engineer. The application should be accompanied by all particulars outlined on page 1 of the application form.

Where the development has been completed to the satisfaction of the Planning Authority and where requested by the majority of the owners of the houses involved, the Planning Authority shall initiate the procedures for taking in charge.

Where the development has not been completed to the satisfaction of the Planning Authority and enforcement proceedings have been commenced then the taking in charge procedure will not commence until the enforcement matters have been regularised.

3. Taking in Charge

Taking in charge means that the roads within a development become public roads under Section 11 of the Roads Act 1993 and where an order is made under this section, the planning authorities also take in charge:

- Any sewers, watermains¹ or service connections within the attendant grounds of the development,
- Public open spaces or public car parking spaces within the attendant grounds of the development,
- Public footpaths, and
- Street Lighting
- Developers shall note that liability for the above elements of a development shall remain with the Developer/Registered owner until such time as they are taken in charge by Clare County Council.

¹ Where potable water and foul water infrastructure has been vested in the ownership of Irish Water through a Connection Agreement, there is no requirement for a Planning Authority to take such infrastructure in charge.

4. Maintenance of Services

The maintenance of services that will be provided by the Council following the completion of the taking in charge process includes the following:

- Maintenance of all roads and footpaths, including public car parking spaces;
- Repair and reinstatement of roads, footpaths and landscaped areas, resulting from repair and/or maintenance of underground services carried out by the Council;
- Road sweeping and cleaning services of the public routes within the residential development;
- Upkeep and maintenance of all Street Lighting installations including non-standard light fittings;
- Maintenance of public open spaces (that is, spaces to which the general public have access), but **not** including grass cutting or maintenance of grass verges, incidental ornamental/landscaped areas, shrubberies or playgrounds, unless such playgrounds are required, as a facility which will be available to the general public, by the Council by way of planning condition.

5. Early Identification of the Areas to be Taken in Charge

In accordance with the Department Circular PD1/08, where pre-planning meetings are held, the applicants will be requested to delineate the area to be taken in charge on a site layout map to be submitted with the planning application. The Planning Authority will ensure that the design of the approved development will facilitate the taking in charge of the development by separating the areas/facilities that will be taken in charge from those that will not. Sewers and water mains and utilities should not be located under landscaping or allocated parking areas that will not be taken in charge.

6. Construction and Design Standards

The Planning Authority will set out by way of conditions those standards, which apply to particular developments and to distinct parts of the development, in accordance with the recommendations/guidelines from the Department of Housing, Planning and Local Government and/or other Government Departments. General Conditions and Standards are set out in Appendix 1 and must be adhered to in respect of all residential developments.

7. Development Management

Developers will be required to complete residential developments to a standard that is in compliance with the planning permission granted.

Section 34 of the Planning and Development Act 2000 (as amended) provides the legislative basis for attaching conditions to planning permissions. Appropriate conditions will be attached to grants of permission for residential development in relation to for example:

- The giving of adequate financial security (S.34 (4) (g))
- The phasing of the development, if appropriate (S.34 (4) (h))

- The facilitation of inspections by the Planning Authority
- The completion of the development in accordance with specified standards
- The evidence to be produced by the Developer to demonstrate that the residential development has been completed to the appropriate standards and the time period for the production of such evidence.
- The maintenance by the Developer of the residential development until taken in charge.
- The vesting in the Council by the Developer, upon taking in charge, of the areas to be taken in charge.

8. Financial Security/Bond

As stated above, in the case of residential developments, a planning condition will be applied that will require the submission of a security that will be held by the Planning Authority to ensure the satisfactory completion of the development. Where a development is not completed to a satisfactory standard, the Planning Authority will draw down this security in order to complete the development. When a development is completed by the Developer to the satisfaction of the Planning Authority the security will be released (subject to the completion of vesting, refer to section 11).

9. Inspection Procedure by the Planning Authority

Ensuring that developments are completed in accordance with planning permission is an essential part of a comprehensive taking in charge policy. Regular monitoring will be carried out by the Planning Authority as part of the taking in charge process to ensure that if issues of non-compliance arise, the Planning Authority is in a position to address same with the developer and to take necessary action including enforcement action to ensure compliance.

To facilitate the taking in charge of an estate a self-certification process² is required to be put in place by the Developer in relation to various aspects of the infrastructural works on the development, as each phase / stage of the development is completed.

The stages are categorised as follows:

Stage	Works
1	Road and Footpath Formation Level (sub-grade and or capping)
2	Water Supply, Foul and Storm Water Drainage systems in place prior to backfilling
3	Road and Footpath construction layers laid excluding final macadam wearing course
4	Road construction final wearing course, service chambers and covers in place
5	Street Lighting Operational
6	Landscaping, boundaries, road markings, signage and street furniture
7	Full compliance with Planning Permission
8	Final completion of scheme or phase of scheme

² See Stage Certificates to be submitted in Appendix 2

The following are the various steps required:

- (i) Upon commencement of development, the Developer is required to notify the Planning Authority to advise of a suitably qualified person³ (hereafter referred to as the “Appointed Consultant”) appointed to oversee the inspection/certification process and to agree any phasing plans for the development;
- (ii) The Appointed Consultant must have satisfactory experience, and be fully bonded with Professional Indemnity Insurance in the sum of €2,000,000. Evidence of such insurance shall be furnished to Clare County Council;
- (iii) The Developer shall prepare a programme of inspections to be carried out by his appointed consultant, tied to the projected completion of the development, including such phasing as may be conditioned in the Grant of Permission or as agreed by the Planning Authority.
- (iv) A series of interim or stage certificates are required to be submitted to the Planning Authority, in relation to various aspects of the infrastructure works on the housing estate development, as each stage of development is completed (8 stages outlined above);

Work shall be certified within one week of an element or stage being completed, with regular inspections taking place by the appointed consultant. Certificates shall be submitted to the Planning Authority within 3 working days of signature;

- (v) The Planning Authority may carry out random checks in addition to the above Developer self-certification process. The Planning Authority will endeavour to make contact with the ‘Appointed Consultant’ on behalf of the Developer to facilitate any such random checks. Any defects identified shall be rectified immediately in accordance with the relevant design standards. The ‘Appointed Consultant’ shall keep a record of all defects, the times when they were identified or reported to him, the action taken to correct the defects, and the times when they were successfully corrected. These records shall be submitted to the Planning Authority as part of the “Taking in Charge application and accompanying documentation”.
- (vi) Copies of any test results, photographs, etc. in support of the certified works are to be retained by the ‘Appointed Consultant’ and shall be available for inspection by Clare County Council for a period of 7 years.
- (vii) The ‘Appointed Consultant’ shall not sign the certificate unless satisfied that adequate measures are in place by the Developer to protect certified work pending overall completion of the estate.

³ A suitably qualified person is either a Civil/Structural Engineer or Architect with a Level 8 Degree and/or membership of the IEI or RIAI.

Upon completion of the development, the developer must satisfy the Planning Authority that the development has been carried out and completed in accordance with the planning permission and any conditions to which the permission is subject.

On receipt of a taking in charge application and accompanying documentation, the Planning Authority will carry out an inspection of the development. Following this a list of any outstanding works necessary to bring the development up to the required standard will be sent to the developer. The Authority will re-inspect the development on completion of same to ensure that they have been carried out to the required standard.

10. Taking in Charge Programme

Where a developer wishes to have a residential development taken in charge, and is satisfied that the works have been completed in accordance with the planning permission, the developer should complete the form **P11 Taking in Charge Application Form (available on Council website <http://www.clarecoco.ie/your-council/forms/planning/>)** and submit same along with all accompanying documentation as set out on page 1 of the application form.

The Planning Authority will endeavour to assess applications to have estates taken in charge within the following timeframes:

- (i) Within three weeks from receipt of the application for taking in charge, the Planning Authority will acknowledge receipt of the application and all required documentation
- (ii) Within three months of receipt of fully completed application for taking in charge, the authority will in conjunction with the Developer, carry out a comprehensive inspection of the development or phase of development; taking into account all certificates submitted and notify the Developer in writing of all outstanding issues associated with the satisfactory completion of the development.
- (iii) The Developer will within one month of receipt of details of outstanding issues from the authority, arrange for completion of the said works, and notify the authority when works are completed. If works cannot be carried out within that period the Developer must notify and agree with the authority as to when the works will be completed.
- (iv) The authority will, within two months of being notified of completion of the works at (iii), arrange for final inspection of the estate to determine the satisfactory completion of the said outstanding issues as identified at (ii).

Upon final inspection of the estate or phase of the estate and satisfactory completion of the works, the authority may release a proportion of the bond lodged to secure completion of the works and shall proceed to initiate the statutory process to take the estate in charge. All reasonable efforts shall be utilised to ensure that formal procedures are completed for the taking in charge process with minimum delay. Once the taking in charge process has been finalised, the bond/remaining bond will be released.

11. Vesting

The Developer will convey to the Council (at no cost to the Council) the public roads & footpaths, public car parking spaces, street lighting, including open spaces, which have been designated for taking in charge. A proportion of the bond/security may be retained until the areas in question have been legally transferred to the Council.

12. Management Companies

Certain private housing developments (e.g. apartment complexes, etc.) will have a condition in the planning permission that a properly constituted management company be established for the purpose of maintaining the roads, footpaths, street lighting, parking areas, services and open spaces. The said roads, footpaths, etc. shall be conveyed by the Developer to the Management Company prior to the release of the Bond.

13. Enforcement Action

The Planning Authority may carry out inspections to ensure that developments are being carried out in compliance with the planning permission as granted. Where the development is not being carried out in compliance with the conditions or in conformity with the planning permission the Planning Authority will use all the remedies available to them under the Planning and Development Acts 2000, as amended, to ensure the development is completed to a satisfactory standard.

14. Power to Refuse Planning Permission

Consideration will also be given to Section 35 of the Planning and Development Act 2000 as amended which gives the Planning Authority power to refuse planning permission to a Developer who has substantially failed to comply with previous planning permissions. This power can now be applied without recourse to the High Court.

Appendix 1: General Conditions and Standards

1. The development is an authorised development and has been completed to the satisfaction of the Planning Authority in accordance with the permission and conditions to which the permission is subject.
2. The roads, footpaths, sewers, drains and water mains shall be constructed in accordance with the following design standards (or any updated version):
 - “Recommendations for Site Development Works for Housing Areas” – Department of the Environment and Local Government 1998^{4*}
 - Design Manual for Urban Roads and Streets (DMURS)
 - Traffic Signs Manual
 - Irish Water Code of Practice for Wastewater and Water Infrastructure
 - Sustainable Drainage Systems (SuDS) - “Greater Dublin Strategic Drainage Study (GSDSDS)”, “Irish SuDS: guidance on applying the GSDSDS surface water drainage criteria” and “Design and Guidance manuals produced by CIRIA in the UK”

Compliance with these standards does not confer immunity on the Developer from any legal requirements and does not remove the obligation on the Developer to comply with the requirements of the Planning Acts, relevant sections of the Building Regulations, the Safety, Health and Welfare at Work Act 2005, etc.

3. Street Lighting

The transfer of maintenance responsibility for street lighting from the developer to the Council is a separate process to the taking in charge of an Estate under Section 180 of the Planning & Development Act 2000, as amended. However, where an estate is being taken in charge, the declaring of a road to be a public road effectively leads to the street lighting servicing the road becoming public lighting. Before Clare County Council will assume responsibility for street lighting the Developer shall satisfy Clare County Council that the street lighting meets the requirements of EN13201 BS5489:2013, the Code of Practice for Public Lighting ET211: 2003, the National Rules for Electrical Installations (ET 101:2008), the National Code of Practice for Customer Interface 4th Edition 2009 (ESB Networks) and any updated versions of these documents.

4. Open Spaces

The development and landscaping of open spaces shall be carried out in accordance with the planning permission granted and the following specification.

Maintenance of open space areas (including grass cutting) shall be the responsibility of the residents after the Taking in Charge process has been completed. With the

⁴ Available from *Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2 – Tel: 01 – 6613111.*

exception of any features to be retained, grassed open space areas shall be free of rock and all hazardous objects and be developed for usage by persons present on the areas for the purpose of engaging safely in recreational activity.

The Developers shall carry out the following operations prior to taking in charge by Clare County Council – stone picking over 25mm diameter, weed elimination, cutting, repair of all erosion and settlement, filling of all holes to ensure uniform grading throughout and reseeded as necessary.

- Topsoil: shall be of good quality and must not include subsoil, excessive proportions of clay, sand, chalk or lime, nor may it include rubbish or other extraneous material, pernicious weeds or couch grass whether roots or top growth, or roots of trees or shrubs. A minimum depth of 150mm of topsoil is required. Finish topsoil level shall be 25mm above adjoining paths, kerbs and manholes. Topsoil shall conform to BS 3882:2015 and shall be placed to all general planting, hedgerow and grass seeding areas
- Grass: In the development of grass landscaped areas, the seeds to be used are the amenity grass seed mixture. On no account should grass seed mixture intended for high yield grass for agricultural purposes be used.
- Drainage: The area to be landscaped shall be appropriately drained.

5. Wayleave Agreements

Five copies of any wayleave agreements registered on the folio of the property outside the subject property (if applicable) must be submitted, e.g. sewers and/or watermains located in private property not being transferred to Clare County Council. Bond monies will not be released until wayleaves have been registered.

The Developer shall furnish evidence to the Council that all necessary wayleaves for services are reserved forever in the transfer documentation to house purchasers.

The Developer shall note that a minimum width of 10 metres shall be required in respect of any Wayleave for sewers or watermains.

6. As constructed Drawings

Five copies (both digital and hard copy) of “as constructed” drawings (scale 1:500) of the development shall be submitted to Clare County Council. The drawings shall indicate the following information:

- (i) TIC Drawing: the estate boundary depicted in red, open spaces coloured green, all roads, public car parking spaces, footpaths and street lighting coloured yellow.
- (ii) Land Transfer Drawings/Maps: The Developer shall legally transfer or convey to Clare County Council, at his/her expense, all of the land contained in the planning permission affected by this policy document. In addition to the above

TIC drawings, three Certified Maps in compliance with the requirements of 'Land Registry' are required for the purposes of land transfer.

- (iii) Drainage Drawings: foul and surface water sewers, manholes, road gullies, sustainable drainage systems (SuDS), pumping stations. The invert and cover levels of all manholes/pipes shall be indicated relative to Irish Transverse Mercator (ITM) Malin Head Datum. The type, diameter, invert level, cover level and gradient of all sewer pipes shall be indicated on the drawings.
- (iv) Watermain Layout Drawing: watermain layout to include pipe sizes, hydrants, all valves and chambers, bulk meters and domestic water meters, etc.
- (v) Road Layout Drawings: road signs and road marking details, traffic signals (1:200).
- (vi) Public Lighting/Utility Drawings: A lighting layout drawing showing locations of columns including ducting, mini pillars, telecommunication ducts and chambers, ESB ducts, chambers and poles, Gas pipe lines, chambers and valves. A separate lighting design drawing is also required with a plot of light levels illustrated, superimposed on the site layout with supporting calculations.
- (vii) Wayleave Drawings: wayleaves depicted in blue on private property not being transferred to Clare County Council (see appendix 1 section 5 above).
- (viii) Site location Map

7. Reports

- (i) 5 copies of the CCTV sewer condition survey report and SUS25 Manhole condition survey report completed at the Developer's expense, of the collection systems as conditioned in the relevant planning permission. The CCTV survey of the pipes to be carried out using a camera which is capable of measuring distances from one manhole to another. The CCTV survey and report shall be undertaken in accordance with Irish Waters requirements and the Water Research centre (WRc) Manual for Sewer Condition Classification (MSCC) 5th Edition (or any updated version) and include a sewer condition scoring scheme in accordance with the scoring scheme of the Sewerage Risk Management (SRM) Manual 5 produced by WRc. Any defects shall be corrected by the Developer at his own expense. Once all defects have been corrected a further CCTV survey shall be carried out to confirm same. CCTV manhole and pipe references (names/numbers) shall be labelled to match the as-constructed drainage drawing references. All personnel responsible for classifying sewer infrastructure condition shall have completed appropriate training and achieved successful accreditation in a sewer condition classification course, to enable personnel to classify pipe conditions to the level of Manual of Sewer Condition Classification 5th Edition.
- (ii) Operation and Maintenance Manuals for pumping stations including full pump details, specifications, performance curves/power ratings, type and size of pumps; wiring diagrams for control panel and switch gear; telemetry system;

lifting equipment including certification of same and all warranty documentation for the installed equipment.

8. Original file plan folios of all lands affected by the development shall be submitted to the planning authority.
9. Under the Safety, Health and Welfare at Work (construction) regulations 2013, a safety file prepared with and completed in accordance with regulations 13 & 21 of S.I. No 291 of 2013 must be submitted to the Planning Authority, on completion of a development, with any request for the development to be taken in charge.

Appendix 2: Stage Certificates⁵

CERTIFICATE NO. 1

For the benefit of Clare County Council, we hereby certify that:

The road and footpath formation level (sub-grade and or capping) has been constructed in accordance with the requirements of Clause 2.15, 2.16, 2.17 & 2.18 of 'Recommendations for Site Development Works for Housing Areas' – Department of the Environment and Local Government (November, 1998).

1. Signed: _____ **Company:** _____

Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

⁵ Copies of any test results, photographs, etc. in support of the 'works certificate' are to be retained by the certifying Appointed Consultant and shall be available for inspection by Clare County Council for a period of 7 years.

CERTIFICATE NO. 2⁶

For the benefit of Clare County Council, we certify that:

Sewers have been laid and backfilled in accordance with the requirements of this Taking in Charge Policy document Appendix 1 and tested in accordance with the requirements of Clause 3.20 of 'Recommendations for Site Development Works for Housing Areas' – Department of the Environment and Local Government (November 1998).

Potable water pipes have been laid and backfilled in accordance with Irish Water's 'Code of Practice for Water Infrastructure' and tested, passed and sterilised in accordance with the requirements of Clause 4.18 of 'Recommendations for Site Development Works for Housing Areas' – Department of the Environment and Local Government (November, 1998).

All wayleaves as per item no. 5 & 8 of Appendix 1 are registered (if applicable).

1. Signed: _____ **Company:** _____
Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

⁶ Certificates may be submitted to Irish Water by CCC as part of the taking in charge process.

CERTIFICATE NO. 3

For the benefit of Clare County Council, we certify that:

The road and footpath (excluding final wearing course) comply with the requirements of Section 2 of 'Recommendations for Site Development Works for Housing Areas' – Department of the Environment and Local Government (November 1998).

1. Signed: _____ **Company:** _____

Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

CERTIFICATE NO. 4

For the benefit of Clare County Council, we certify that:

The road construction final wearing course, service chambers & ironwork covers comply with the requirements of this Taking in Charge policy document appendix 1.

1. Signed: _____ **Company:** _____

Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

CERTIFICATE NO. 5

For the benefit of Clare County Council, we certify that:

The Street Lighting has been designed and installed in accordance with the requirements of this Taking in Charge policy document appendix 1 item no. 3.

1. Signed: _____ **Company:** _____
Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____
On behalf of Clare County Council

CERTIFICATE NO. 6

For the benefit of Clare County Council, we certify that:

The landscaping, boundaries, road markings, signage and street furniture comply with the requirements of this Taking in Charge policy document Appendix 1.

1. Signed: _____ **Company:** _____
Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____
On behalf of Clare County Council

CERTIFICATE NO. 7

For the benefit of Clare County Council, we certify that:

The development complies with the Planning Permission granted.

1. Signed: _____ **Company:** _____

Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

CERTIFICATE NO. 8⁷

For the benefit of Clare County Council, we certify that:

The development has been completed to the required standard and that all stage certificates are in accordance with Clare County Councils Taking in Charge Policy.

1. Signed: _____ **Company:** _____

Third Party (Appointed Consultant)

Name (Block Capitals): _____ Date: _____

Qualification: _____

Professional Insurance Indemnity up to €2,000,000 provided by

2. Receipt of this Certificate is acknowledged

Signed: _____ Date: _____

On behalf of Clare County Council

⁷ Certificates may be submitted to Irish Water by CCC as part of the taking in charge process.