Circular SP 5/08

30 September 2008

To: Each County Manager

Rural Housing Policies and Local Need Criteria in Development Plans: Conformity with Articles 43 and 56 (Freedom of Establishment and Free Movement of Capital) of the European Community Treaty

Dear Manager,

Ireland received a Letter of Formal Notice in June 2007 from the European Commission, seeking observations on whether the ‘local needs’ assessment test set out in this Department’s 2005 Sustainable Rural Housing Guidelines for Planning Authorities and contained in County Development Plans for consideration of planning applications for one-off dwellings in rural areas is compatible with Articles 43 and 56 of the EC Treaty which guarantee respectively the freedom of establishment (of business) and the free movement of capital.

The Commission specifically referred to the following local needs assessment criteria in the Letter of Formal Notice:

a) Residency or former residency in the county;

b) Bloodline links to the locality (i.e. to have relatives among the local residents or family links to the area);

c) Local employment (specification of types of local employment which would be conducive to a positive assessment);

d) Agricultural activities (specification that only those engaged in agricultural activities would be eligible for planning permission); and

e) Linguistic ability requirement (i.e. where permission to build a residence is dependent on Irish language proficiency).
The Department responded to the Commission in September 2007 with an explanation and justification of our rural planning policies and practices. A subsequent meeting was held earlier this year with the Commission to discuss the issues further.

This circular now aims to clarify how the Sustainable Rural Housing Guidelines should be applied to ensure that local need criteria, policies and practices conform with the Articles of the EC Treaty cited above.

**Local Need Criteria Policies and Practices**
The overarching consideration for the local need assessment criteria in relation to residency, blood-line, local employment and agricultural activities must be that objectives and provisions in development plans and their application in the development management processes do not discriminate against planning applicants wishing to establish a full-time home-based business in an area in favour of those who are deemed to qualify as “locals” through the particular local need assessment criteria, which are adopted by the members of each Council.

Development plan policies based on section 3.2.3 (“Rural generated housing”) of the *Sustainable Rural Housing Guidelines* should continue to apply, in that persons who are an intrinsic part of the rural community, or persons working full-time in rural areas, should be favourably considered in relation to rural housing. Notwithstanding the above, a *bona fide* applicant who may not already live in the area, nor have family connections there or be engaged in a particular employment or business classified within the local needs criteria, should be given due consideration within the proper planning and sustainable development objectives for the area subject to the following considerations:

- such applicants may reasonably be required to satisfy the planning authority of their commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application, in order, for example, to discourage commuting to towns or cities;
- that they outline how their business will contribute to and enhance the rural community; and
- that they satisfy the planning authority that the nature of their employment or business is compatible with those specified in the local needs criteria for rural areas so as to discourage applicants whose business is not location-dependent (e.g. telesales or telemarketing).
The attachment of occupancy conditions to planning permissions, as recommended at paragraph 4.7 of the Guidelines, provided that such conditions are applied in a non-discriminatory manner as between local and non-local applicants, also remains valid. However, the significant variations in the length of occupancy periods specified by different planning authorities needs to be addressed as this could result in disparities of treatment to applicants and could lead to subsequent restrictions and distortions in the way the EU internal market operates. It is recommended, therefore, that all rural planning authorities should, if not already doing so, adopt and implement the seven-year period, as set out in Appendix 1 of the Guidelines.

The policies and practices in relation to promotion and preservation of the Irish language in designated Gaeltacht areas are considered justified and proportionate, and continue to apply as outlined in the 2005 Sustainable Rural Housing Guidelines.

It is important to emphasise that all planning applications for houses in rural areas, regardless of where the applicant comes from or whether they qualify under specific criteria, must continue to be determined on the basis of the proper planning and sustainable development of the area, in accordance with development plan policies regarding over-arching environmental concerns, including the protection of natural assets, landscape, siting and design, traffic safety etc.

**Action Required**

In the light of the above, all County Councils are requested to examine their current (or draft) development plan policies and practices to ensure compatibility with the provisions of Articles 43 and 56 of the EC Treaty and, if necessary, introduce variations of the plan to ensure a consistency of approach across all planning authorities.

I would be grateful if you would acknowledge receipt of this Circular by return and, within 4 weeks of the date of this Circular, confirm whether your development plan conforms with the relevant Articles or, if not, specify the steps you intend to take and timescales involved in order to ensure conformity.
Confirmation of receipt of this Circular and the requested response should be sent to:

Ms. Nora Keneghan,
Spatial Policy Section,
Department of the Environment, Heritage and Local Government,
Custom House,
Dublin 1.

or be emailed to: nora.keneghan@environ.ie

Please contact the undersigned if you have any queries.

Yours sincerely,

______________________
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Spatial Policy.

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