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Briefing Paper

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Compulsory Purchase of Residential Dwellings: Financial Compensation for Owner-Occupiers

This briefing paper has been prepared to assist the Committee for Social Development in its consideration of financial support for owner-occupiers whose properties have been vested. The paper provides an outline of the current arrangements for financial compensation in Northern Ireland; an overview of a recent Lands Tribunal case relating to a property vested in the Village Area of South Belfast; and, approaches taken in other jurisdictions to assist owner-occupiers in redevelopment areas.

1 Financial compensation for owner-occupiers in redevelopment areas – current policy in Northern Ireland

The Northern Ireland Housing Executive has the power, under the *Housing (Northern Ireland) Order 1981*, to compulsory acquire land for improvement, refurbishment or redevelopment.

Under the 1981 Order, owner-occupiers of vested properties are entitled to receive compensation equating to the **'market value'** of the property. Additionally, they are also entitled, under the Land Compensation (Northern Ireland) Order 1982, to receive a **Home-Loss Payment**. The intention of the Home-Loss Payment is to compensate for the displacement of the person from their home:

- For **owner-occupiers** – the Home-loss Payment is 10% of the market value of their property (with a minimum of £4,500).
- For **tenants** – eligible tenants are entitled to a one-off flat rate payment of £4,500[1].

Additionally, a **Disturbance Payment**, may also be available for reasonable expenses e.g. the cost of removal, legal costs relating to the purchase of a new home. There are different rates of disturbance payment, for example, £800 compensation for owner-occupiers moving to rented accommodation[2] [3].

2 Outcome of the recent court case with regards to a dwelling in the Village Area of South Belfast

A recent Lands Tribunal judgement (January 2013), **Kerr vs the Northern Ireland Housing Executive[4]**, provided clarification with regard to level of compensation payable when a property is vested for regeneration and the owner-occupier is in negative equity. The property in question was in the Village Area in South Belfast.

Background to the case

Mr Kerr purchased a property in the Village Area for **£152,500** in February 2007, during the height of the property market. At that time Mr Kerr was around 25 years old and resided in the property as owner-occupier. As part of the regeneration of the Village Area, the property was subject to a Vesting Order which became operative in April 2010.

Mr Kerr's outstanding mortgage debt as of April 2012 was **£145,665.61,** his father acted as guarantor. In line with compensation policy, the applicant was offered **£91,000** in compensation in line with the then open market value. In addition to this the applicant was also entitled to a home loss payment of 10% of the market value (£9,000) and a disturbance payment of £800.

The total claim for compensation amounted to around **£100,900**. The payment of this compensation would result in a shortfall of around **£45,000** to Mr Kerr remains liable to pay under the conditions of his mortgage.

The applicant believed that such debt would mean that it was unlikely that he would be able to afford to purchase an equivalent property in the current market and may

[1] Department for Social Development (2010) Policy to Support Owner Occupiers in Redevelopment Areas, consultation document, p 10.
[2] For further information see the DSD Housing Association Guide - www.dsdni.gov.uk/index/hsdiv-housing/ha_guide/hag-index/hagsa-scheme-approval-contents/hagsa-background-home-loss-and-disturbance.htm
[3] See also DfP/Land & Property Services Guidance 'Compulsory Purchase and Compensation: A Guide to Compensation for Residential Owners and Occupiers. www.dfpni.gov.uk/lps/lps_residential_owners_guide-3.pdf
[4] Lands Tribunal for Northern Ireland. Kerr vs Northern Ireland Housing Executive [R/37/2010].

prevent him from purchasing his own home during the remainder of his mortgage term (around 20 years). According to the Judgement, Mr Kerr remains liable to continue to make repayments of £589 per month to his mortgage lenders for the next twenty years.

Issues considered by the Tribunal

The tribunal looked at two issues (a) whether the applicant's loss and liability to his mortgage lender could be recovered as compensation under "disturbance" and (b) the implications of Article 1 of the First Protocol of the European Convention on Human Rights. Article 1 states that:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

Outcome of the case

The Attorney General argued that the severe financial hardship which the applicant is likely to suffer, if he was not compensated, would result in him bearing an individual and excessive burden due to the operation of the Vesting Order, thereby violating A1 P1 unless the respondent demonstrated that the compensation offered was *proportionate to the aim pursued in the public interest*.

Mr Kerr was not successful in his claim. The Tribunal ruled that negative equity is a situation "directly based" on the value of land and the loss experienced by Mr Kerr resulted from the collapse of the property market which had occurred before, and independently of, the Vesting Order.

Furthermore, the Tribunal found that the legislative framework afforded a "realistic balance" between the public need for community regeneration and the individual needs of those who would be adversely affected and that it *"did not set out to resolve every anomaly and hardship"*. In arriving at this decision, the Tribunal took account of the balance between public and private interests and referred back to the submission of the Counsel of the Department of Finance and Personnel that the vast majority of the 538 properties affected by the Vesting Order were likely to be in 'positive equity' and would benefit from the vesting (with residual mortgage debt for around 54 landlords and 6 owner-occupiers).

Re-examining the policy on support for owner-occupiers

The Tribunal referred to DSD's *Policy to Support Owner/Occupiers in Redevelopment Areas*, and suggested that in light of the case, it would be an opportunistic time to review the policy. The Judgement stated that:

> *"It is clear from the contexts of that policy that the Department has an appreciation of the need to support owner/occupiers in redevelopment areas although, currently, that policy is not designed to support such owner/occupiers in negative equity as a consequence of the market collapse. In view of the relatively small numbers concerned and the extent of the personal hardship revealed in the course of this litigation it might now be considered to be an appropriate time to review that aspect of the policy."*

Ministerial Response to the Judgement

Responding to the outcome of the case, the Minister for Social Development stated that he welcomed the clarification provided by the judgement but that he empathised with the many people in Northern Ireland who currently find themselves in negative equity.

The Minister further stated that he had instructed his officials to re-examine the policy to support owner/occupiers in redevelopment areas to determine if it could be amended to take account of the issue of negative equity. However, he added that this would *"require some detailed legal analysis and consultation with my Ministerial colleagues in NI Executive."*[5]

3 Financial support packages to support owner occupiers in redevelopment areas – approaches in other jurisdictions

A range of financial support packages are available in Great Britain for owner occupiers in clearance areas to assist them in purchasing an alternative property. In addition to statutory compensation, other financial support is primarily in the form of **loans** or **shared equity schemes**. Two examples are provided – i.e. the Burnley Council 'Purchase Assistance' Loan and the Scottish Government's 'New Supply Shared Equity Scheme'. However, it should be noted that the various schemes may be of limited assistance for those substantial negative equity.

[5] Department for Social Development. News Release. "Minister welcomes clarity on compensation for vested properties". 10 January 2013.

Example: Loan Assistance

Burnley Council – "Purchase Assistance Loans' (PAL)[6]

Purchase Assistance Loans are available to owner-occupiers whose homes have been purchased by the Council under compulsory purchase. The Loan is non-means tested and can be taken out in joint names for residents living in the same property. To be eligible the owner occupier must have been in occupation of their former property and where the property was the only and principle home of the occupier on the date of the in-principle decision to declare the clearance area. Landlords and Tenants are not eligible for the Purchase Assistance Loan.

The Loan can be used to fund the gap between the total compensation payable to the applicant and the value of the new home being bought. The Loan can also be used to fund the cost of repairs to the new home up to a maximum of £5,000. If the property is subject to mortgage retention then the repairs allowance may be used to fund those works.

The property to be purchased must be within the Borough of Burnley or Pendle but the home must not be identified for future clearance in a council plan. There is no upper limit on the value of the replacement property.

The maximum loan available is normally £30,000 (in exceptional circumstances this can be increased to £40,000, e.g. where the applicant requires a bigger more expensive property to prevent overcrowding; to accommodate a family member with a relevant disability; for older people unable to obtain a mortgage). The Purchase Assistance Loan cannot amount to more than 50% of the value of the replacement property.

There are no repayments required during the lifetime of the Loan but can be repaid to the Council at any time without penalties being incurred. Conditions under which the loan must be repaid include – the death of the owner, the owner acquires a new property which will be their main residence; where a mortgage lender repossesses the property.

When the loan is repaid, the council is entitled to share in any increase in the value of the home at that point in time. Where the owner has carried out improvements to the property using their own finance they are entitled to retain the benefit of any increase in value in relation to that work.

Example: Shared Equity Scheme

Scotland – "New Supply Shared Equity Scheme'[7]

This scheme aims to help people on low to moderate incomes to purchase a property. The purchaser will normally fund around 60-80% of the property and the Scottish Government will hold the remaining share under a shared equity agreement (in exceptional circumstances a stake of less than 60% but not less than 51% is possible on consent with a registered social landlord who is responsible for overseeing building and financing the homes). The Scheme is primarily aimed at social renters (and other groups such as disabled people, former and serving members of the armed forces) and also those whose homes are affected by demolition plans who wish to purchase a property in the same area.

Eligibility rules for the scheme are similar to those for loans offered by many councils' in GB for replacement loans following compulsory purchase, i.e. the home must be the purchaser's main residence and only home. Applicants must also demonstrate that they cannot buy a suitable house without help from the New Supply Shared Equity Scheme. At any time homeowners have

[6] Burnley Borough Council. "Purchase Assistance Loans Policy" www.burnley.gov.uk/site/scripts/download_info.php?fileID=2184

[7] Scottish Government (2012) New Supply Shared Equity Scheme: Information Brochure. www.scotland.gov.uk/Resource/0040/00400880.pdf

the option of increasing their equity share by a minimum of 5% at any time and up to buy 100% of the share if they have the means to do so.

Research by the Joseph Rowntree Foundation *"Demolition, Relocation and Affordable Housing' (2007)*[8] explored, amongst other issues, financial compensation in housing clearance areas. It examined the 'Housing Market Renewal Pathfinder' programme (introduced in the early 2000s to rebuild housing markets in areas in England with dereliction and poor housing conditions) which involved compulsory purchase of properties. It noted in some local authorities in pathfinder project areas provided **relocation grants** of between £10k-£20k to bridge the gap between compensation packages and the cost of purchasing a new home. However, it was found that increasing the scale of relocation made the grants financial unsustainable, more difficult to provide to residents on an equitable basis and the use of the grants had been questioned on the grounds of value for money.

The JRF research also highlighted that pathfinders also provided **a range of other financial assistance mechanisms** to owner occupiers including[9]:

Homeswap: developed by Salford City Council, enabled owner-occupiers affected by clearance to transfer their existing mortgage to an alternative property. A charge may be placed on the new property to cover value differentials between the old and new homes. This charge is discounted overtime so that the longer a household remains in the new property the less will have to be repaid to the local authority. As with equity loans any charge is only recoverable after the subsequent sale of the new property. However, the success of 'homeswap' is dependent upon the local authority having a stock of available and desirable properties available within the search areas of households affected by clearance. Further information on the homeswap scheme is available from Salford City Council's *Private Sector Housing Assistance Policy* (www.salford.gov.uk/d/Private_Sector_Housing_Assistance_Policy_July_2011.doc).

Section 106 (developer contributions) discounted housing: These agreements are negotiated with private sector housing developers to provide a proportion of discounted affordable properties in new build developments. This discount can be around 30% of the open market value. The properties are usually sold to low income households including those taken from social housing waiting lists. However, it was highlighted that such properties might still be unaffordable for owner-occupiers in low value properties in clearance areas despite the large discount. It was also highlighted that negotiations with private developers can be protracted and subject to other delays in the development process.

[8] Cole, I. & Flint, J. (2007) 'Demolition, Relocation and Affordable Rehousing: Lessons from the Housing Market Renewal Pathfinders. Published by the Joseph Rowntree Foundation by the Chartered Institute of Housing. www.jrf.org.uk/sites/files/jrf/1965-demolition-relocation-rehousing.pdf

[9] Cole, I. & Flint, J. (2007) 'Demolition, Relocation and Affordable Rehousing: Lessons from the Housing Market Renewal Pathfinders. Published by the Joseph Rowntree Foundation by the Chartered Institute of Housing.

Selling Poorly Maintained Properties at a Discount: Involved local authorities or other registered social landlords selling a vacant poorly maintained property at a discounted price to an owner-occupier whose home has been compulsory purchased, who then renovates the property to certain standards and timeframes.

It should be noted that the **Department for Social Development** have put into place two support options to assist owner occupiers to remain in their communities post-regeneration. These schemes are:

Social Housing Sales Scheme – Early Buy Out: Owner occupiers have the opportunity to be re-housed as social tenants. This scheme would provide the former-owner occupier the opportunity to purchase the home under the House Sales Scheme (usually social housing tenants must rent in social housing for five years to be eligible). The former owner-occupier would not be subject to the five year rule.

Shared Equity: this is aimed at assisting those owner occupiers whose compensation for compulsory purchase falls short of the value of the new home put back in the redevelopment area. The aim of Shared Equity would provide the former owner occupier to purchase the new home with any difference in value between their old and new home held by the Housing Association (responsible for building the new homes in the regeneration area).

Working with lenders to support home owners in negative equity

An additional means of supporting those in compulsory purchase areas who are in negative equity is for government to enter into negotiations with lending institutions to explore the possibility of putting in place negative equity schemes for those in vested areas. For example, the provision of a new loan of 100% of the valuation of the new property (possibly via one of the replacement properties in the compulsory purchase area) *plus* the negative equity from the existing property. However, given the dramatic fall in house prices in Northern Ireland (with many people finding themselves in substantial negative equity), the relatively small numbers affected by vesting and negative equity, in addition to financial institutions much tighter lending criteria, this may be difficult to achieve.