



Northern Ireland
Assembly

Committee for Regional Development

**OFFICIAL REPORT
(Hansard)**

**Inquiry into Unadopted Roads: National
House-Building Council**

18 April 2012

incentive for builders and developers to make sure that bonds are dealt with, the road is completed and the release achieved. Everything is explained in the booklet that I supplied to you.

From 1990 to date, we have acted as security for 4,959 bonds in Northern Ireland, with an initial value of well over £210 million. At the moment, there are 1,220 active bonds that we have provided to builders and developers in Northern Ireland with a current value of just under £50 million. Some 75% of all bonds for which we have acted as surety have been cancelled, which indicates to me that, until circumstances changed recently, builders and developers have, by and large, dealt with their obligations.

The current level of activity in housebuilding in Northern Ireland is very low; I do not need to rehearse that. However, in the last five years, we have provided 624 new road and water bonds, with an initial value of £38.7 million. It is our intention to continue to provide significant support to the housebuilding industry where we can. The facility has been greatly valued by builders and developers. Where bonds are available for commercial sources, they are becoming increasingly rare and expensive.

There is a limit to the bonds that we can provide to any builder or developer, and that is based on their activity over the last four years. Basically, their bond limit with us is the last four years' registrations with us multiplied by £3,000. That has worked very well over the years. The bond limits are recalculated every year. If the builder's production comes down, as it has recently, their bond limit comes down. Our thinking is that, if the bond limit is coming down, cash flow is coming down. Therefore, we want them to concentrate on their existing bonds and deal with those. We are not too keen to give additional bonds to builders that are already overexposed.

As was mentioned, we now require separate bonds for NI Water and the Department for Regional Development's (DRD) Roads Service, rather than a combined road and sewer bond. I am aware that you will probably get a different story from Roads Service and NI Water but the view of the industry is that the value of bonding required has increased significantly as a result. We were told that the values of the combined road and sewer bond would be similar to the two separate bonds but we believe that that is not the case.

The Construction Employers Federation has, I am sure, made a submission to you. It has done quite a lot of work on current infrastructure costs and talked to NI Water and Roads Service about that. One of our biggest developers has just given me information that, since NI Water and Roads Service required separate bonds, the average they are required to provide in bonding is now £7,250 per house, which is significant.

I read the Hansard report of 7 February with great interest. I also saw reports in the local media of MLAs becoming involved. I live in Mr Beggs's constituency and I see that he has been active recently in pointing out issues that, I suspect, will cost us money in the near future.

There is a bit of confusion about bonds. Where the builder or developer no longer exists and leaves unadopted bonds, Roads Service is entitled to call the bond from the surety provider. With respect, I suspect that the National Asset Management Agency issue is a bit of a red herring. Once the bond is in place, the relationship is instigated between a surety provider such as ourselves and Roads Service or NI Water. The builders or developers are in the middle of that. However, if the builder or developer goes out of business, there is a direct relationship between Roads Service and us or other surety providers, or NI Water and us. So, you should not necessarily overcomplicate that.

If the bond is called, and the builder and developer no longer exists, that is the risk that we and other surety providers have taken. We are insurance companies; that is what we are here for. We live with that.

Of the bonds that we provided in Northern Ireland, 75% have already been cancelled. Downturn in the past six years has been unprecedented. Housing developments are taking longer to complete. Builders' cash flow has taken a serious hit for those builders who are surviving. Completion of development roads is, therefore, taking longer.

You will all be aware of numerous cases where development roads and paths remain at base course stage. I respectfully suggest that that is not an unacceptable position in the interim until the market recovers, provided that everything is maintained in a safe condition. Insurance and maintenance procedures have to be in place.

In the good times, five or six years ago, builders were happy enough to agree very large bonded areas with Roads Service. Only a small percentage of those areas may have been developed. Roads Service has been very helpful in some cases in splitting those bonds into roads that have been completed where houses are built and those for future completion.

The other issue is with NI Water bonds. Article 161 bonds that we have seen specify that reductions will be available when the majority of homes are occupied. NI Water is very reluctant to provide preliminary certificates until 80% of houses are occupied. That is causing a difficulty. Its website guidance notes state that 80% of homes have to be completed in a bonded area, whereas the legal documentation states that it is the majority, which is 51% to me.

We are aware of cases where builders are finding it difficult to obtain justifiable reductions. Most surety providers are very reluctant to provide more bonds until builders have dealt with and got reductions in their existing bonds. It is most important that Roads Service and NI Water are able to agree to reductions where justifiable.

We have also seen cases where Roads Service stepped in to complete development roads despite the builder remaining in existence and with homes to complete. By the letter of the law, it can do that, but that is causing some difficulty. That was not done historically.

The combined road and sewer bond by definition covered one area, whereas the road bonds may now cover a different area from the NI Water bonds. Therefore, it is much harder to get reductions, especially if there is something like a pumping station on the site, where NI Water, quite rightly, will not want to provide too much in the way of reductions until it is sure that the pumping station is built, operating and through its maintenance period.

The NHBC fully supports the requirement for a mechanism to ensure that roads and sewers are completed. There is no question about that. Protection of homeowners is what we do.

We suggest that Roads Service and NI Water should be able to justify the values currently being requested for bonds. As I said, we understand that the Construction Employers Federation can provide a lot of information on that. NI Water and DRD Roads Service should allocate sufficient resources to ensure that applications for reductions in release of bonds are assessed and progressed where justified and without undue delay, because that enables builders, where the market is recovering, to get more bonds for their new developments.

Provided that development roads and paths are to a satisfactory base course standard and the builder or developer continues to trade, I would suggest that it may be reasonable, in the short to medium term and in current market conditions, for that to be considered satisfactory, provided that maintenance and insurance arrangements are in place.

As a slight side track, the Flood and Water Management Act 2010 has been enacted in England and Wales. That was introduced to deal with major flooding issues and excessive run-off from storm drains and developments. One of its outworkings, however, is that work is going on to develop an accredited contractor scheme, which would be insurance-backed. That would mean that accredited contractors would come in and do the storm drainage infrastructure on a house building site, which would give assurance to NI Water that the work is being done correctly and will do away with the need for builders to produce water bonds. We should keep an eye on that. When that is established and is shown to work, it may be an option for Northern Ireland.

The market is, hopefully, recovering slightly. Builders are discovering that they have to meet an awful lot of additional costs that were not there five years ago. There have been significant increases in costs of water and sewer connections. Planning fees, electrical supply costs and connection costs

have gone up. I understand that there is a potential application of rates to houses under construction, which is an extreme worry.

However, future availability of road and water bonds will be one of the most significant factors in determining the rate of recovery of the local house building industry. If the Committee should recommend that changes in bonding arrangements are desirable, we would be keen to be involved in any discussions and help where we can. Obviously, should any further information be required that you think I could help with as your inquiry proceeds, I would be more than happy to provide that. Thank you for your attention.

The Deputy Chairperson: How much detail do you go into with regard to the financial checks that you carry out into contractors before you issue a bond?

Mr D Little: We do bonds only for builders and developers that have been with us for 15 years. A builder does not get on our register until we do a financial check. We do a technical check on the builder as well. We observe him building houses to make sure he can do it. We do financial checks on a developer coming on to the register, but in the current environment we are not relying on 15-year-old financial checks. We now do continuing checks on all builders and developers on the register, particularly if they ask for a large new bond.

Mr Beggs: Thank you for your presentation; it was very useful. You indicated that your organisation provides bonds elsewhere, not just in Northern Ireland.

Mr D Little: It is throughout the UK. Everything we do is done throughout the UK as far as possible.

Mr Beggs: You also mentioned that you were using the figure of about £3,000 per house in previous years but that it has gone up as high as £7,250.

Mr D Little: That is the figure that a local developer is getting for the bonding requirement he is being asked for, when you aggregate the NI Water and the road bonds.

Mr Beggs: Is that because of a specific issue? For example, is the development up a long lane?

Mr D Little: No; that is one of our mainstream developers.

Mr Beggs: What level of bonds are required elsewhere? Has there been any explanation as to why there has been an increase of over 100%? What is the bond value in England, Scotland or Wales?

Mr D Little: The £3,000 figure is one that we have always used to calculate the builder's bond capacity with us; it is not necessarily a figure that was in place. You will understand that in a normal market builders are getting bonds cancelled all the time and are taking out new bonds all the time, so it is a very fluid situation. The £3,000 figure worked for many years, but, as I said, with the separate bond requirements for NI Water and Roads Services, the information I am getting from the industry is that the overall level of bonding required, if you average it out per house, is much greater.

Mr Beggs: Are bonds in Northern Ireland significantly different to those elsewhere? That is an important first question.

Mr D Little: There are some in my organisation who believe that the level of bonding here is higher than it is in England and Wales. Again, NI Water and Roads Service will disagree with that.

Mr Beggs: I am trying to draw from your organisation's experiences elsewhere. There are two specific issues that I have come across since we have started this investigation. One has been in smaller developments of fewer than six houses — it could be a very large garden on which five houses have been built — where Roads Service does not require that a road bond be put in place by the developer. Are you aware of a mechanism elsewhere that ensures that that work is finished? I am dealing with one constituent who is in such a development; the builder has gone bust and there is no bond and no road.

Mr D Little: I am not aware of how that would be managed elsewhere. There are private roads all over the UK. There are a number of cases here where I know there are private roads, but we would not be involved in any bonding agreements. I was listening to the previous discussion, and it is up to the purchaser's solicitor to make sure that there are arrangements in place for the roads to be adopted or maintained. When the market was booming, it may have been that things like building control, final certificates and minor details like road bonds were not properly examined.

Mr Beggs: You also mentioned that you felt that Roads Service was, on occasions, moving in too fast when the builder was still there. My experience has been that Roads Service gives the developer almost too long to fix the problem themselves and that only as a very last resort does it, due to the builder having not responded, go in and fix things for the constituent and then draw the money down out of the bond. Can you provide us with any evidence of where you feel Roads Service has moved too quickly? My experience has been the opposite.

Mr D Little: I would prefer not to mention specific cases, but I can certainly give you that information elsewhere. As I said, Roads Service was perfectly entitled under the terms of the bond to do what it did, it is just it had not done that before. If that is going to become widespread, the perceived risk of acting as surety for a bond will change.

Mr McNarry: Thanks very much, David, for your very comprehensive presentation; I have learnt a lot.

Like many members, I have sympathy with the current struggles of the builder, but that is equalised by the tales you hear from people who have bought houses where there are problems. You said that Roads Service was helpful in cases where builder could not complete a development and allowed them do a bit of it; did I pick you up right on that?

Mr D Little: Five or six years ago, a lot of builders were doing over 100 units a year and were quite happy to take out big bonds. As the market died away, they found that maybe a year ago they were in a position where only 20% of the bonded area had been developed. It is not always possible but in some cases, Roads Service has been happy to split the big bond into two bonds. One will cover the work that the builder has done so that they will be able to get the work finished and get the houses released and the other will be there for when work starts again.

Mr McNarry: That seems a very sensible arrangement. How obstructive would the builders' cash flow be? Is that becoming more and more of an issue? Everybody is saying, "Yes, you can do this" or "You might be able to do this", but builders are saying, "We have not got the money to do it." What impact is that having on resale difficulties in cases where you have incomplete sites? I see that as part of the broader picture. Finally, are the NHBC certificates affected in any way with incomplete sites?

Mr D Little: The NHBC warranty relates to the house and the immediately surrounding grounds. There is no connection between the NHBC warranty on new homes and the road and sewer infrastructure. The only minor caveat to that would be if someone were building a one-off house out in the country and putting in their own treatment plant, for example. That would generally all be covered by the warranty, but it would be within the customer's grounds, if you like.

Mr McNarry: So, you issue a certificate for a builder who builds a house, but the roads and everything else around it can be upside down?

Mr D Little: We would be very keen to persuade builders that there should be a safe means of access to a house. Some years ago, the Council of Mortgage Lenders brought in a requirement that the warranty organisations, including us, should provide what the council calls a cover note for a house before it is handed over and before legal completion occurs. If our inspector was not able to get his car up to the house, neither could a furniture van, and we would not "final off" the house. Generally speaking, the situation here has much improved over the past 15 years. Most builders would have the base course roads and paths done before the first house was occupied on any site. That is the minimum that we would like to see.

Mr McNarry: What about the resale difficulties?

Mr D Little: If the solicitors who act for the original purchasers check properly and are satisfied that a bond is in place, I imagine that there should be no legal difficulties for resale. There may be some difficulties where the potential second buyer says that the roads are not finished and decides to buy a property where the roads are finished. If the solicitors have done their work correctly in the first place, they should be able to satisfy the second and third purchasers that a bond is in place and, in due course, if the builder will not finish the roads, Roads Service will call in the bond.

Mr McNarry: I can see utopia, but on some of the sites that I go to — forget about negative equity and everything else — people are concerned. That is why I am interested in this bit about part-finishing a site up to the number of houses finished. I am concerned about the builder having the money to do it, and his cash flow, so it would be good if that were possible.

Mr D Little: With respect, that scenario would only arise if, while the market was falling back, the builder had, perhaps, developed the first 20% of a large field, and the remaining 80%, although it had planning permission, was still a field, without any other roads or open manholes and so forth. It is not something that Roads Service would do very often. There are particular circumstances.

Mr McNarry: I understand that. Perhaps I will take my camera and photograph what I actually see, which is people living in half-built or quarter-built housing developments, and whole sites lying there, while prospective buyers are coming along and asking what is going on, because there are no roads. That needs tidied up.

Mr D Little: The problem of ghost estates that we saw in the South of Ireland has not been replicated here to anything like the same degree. In the past five years, the number of houses being finished in Northern Ireland has been running well ahead of the number of houses being started. The amount of stock is considerably lower than it has ever been. The level of house building now is as low as I can find in our records.

There are particular circumstances, such as those at Quoile Crescent in Downpatrick, where the local MP got involved, but there was never a road bond for that scheme because of the layout of the site. There are not too many developments like that one, however. It has to be said that the housing associations —

Mr McNarry: I hope that I have not got them all in Strangford, because I have three or four cases that are pretty grim.

Mrs D Kelly: Thank you for your presentation. I want to approach this issue from another perspective. A lot of people in my constituency feel badly let down by developers when it comes to the completion of sites, and that is the experience of too many, hence this inquiry. Further to that, even contacting your organisation on behalf of some constituents has proven very difficult. Some people have had particular issues about plumbing in their houses and they feel that they were given the runaround when they were in need of assistance and needed to restore their faith in the developer.

Mr D Little: I will give you my card. We have an office in Belfast, and always have had, and I am perfectly happy to talk to anybody who feels they are having difficulty in getting through to colleagues.

Mrs D Kelly: That would be useful.

Picking up on the point about your financial checks when issuing bonds, a number of the estates in my constituency, particularly in the Lurgan area, have suffered from developers starting off sites and other developers coming in. In those cases, the ownership of the site is with one developer, another developer buys or leases the ability to build the houses and one of them goes bankrupt. In some cases, we have seen people who have declared themselves bankrupt re-emerging as another company, whether it is weeks or months later, and starting on another site. That is a hugely complicated mess that does not inspire confidence. I know a number of developers who are distraught at the behaviour

of some of their colleagues. Such instances are the exception rather than the rule, but those are the sorts of stories that feed the public perception of wrongdoing.

Mr D Little: We have a substantial commercial department in our headquarters in Milton Keynes, where we have access to regular credit reports. Those reports are updated and certain flags come on them when someone's credit score goes below a certain level. If a builder or developer that was registered with us went into liquidation or went bankrupt and re-emerged, this is a small country, so we would know these people. If they applied to join our register again, we would do serious financial vetting on them. We would invariably require them to put up significant security, through cash or a bond to us. If they were men of straw, they would not be able to do that.

There are cases throughout Northern Ireland where developers have bought sites, got planning permission, put in the infrastructure and sold off individual plots. Historically, that has been a fantastic way for small builders to get started: a joiner or bricklayer buys a plot, services it, builds it up themselves, start to get a wee bit of a reputation and builds their way up. That is a very distinct industry in this country and is largely made up of small family firms, sole traders and small partnerships. Frankly, I love dealing with them. They are the best people in the country, and there is so much variety among them. They are suffering grievously at minute as you know.

In the case of a master developer selling off plots, he should have arranged a road bond, which should be there irrespective of what was happening with the individual plots.

Mrs D Kelly: Can this Committee have confidence about your financial checks and that you are alert to the ability of people to recreate themselves?

Mr D Little: Yes; even if somebody who has been with us for 20 or 25 years without a blemish on their record contacts us and says they are doing a new site and ask for a £200,000 road bond, we will do another financial check. Financial checks are not perfect, but we do the best we can to limit the risk we are taking. We do not charge for the bonds. It is not a profit-making enterprise.

Mrs D Kelly: In the case of those who appear to have broken faith with the people who have bought houses, is there a way in which complaints can be lodged with you?

Mr D Little: Yes, certainly. We are contacted regularly by politicians, including MLAs and councillors.

Mr Dickson: Thank you for your submission, which has been very helpful. As I said to the NILGA officials earlier, there is more than one player in this situation. One of the things I would like to know is where you think there should be a change in the statutory arrangements for bonds. You alluded to some already. You say that your bonds are not profit-making, but where do you get the resource from to pay a bond where a builder goes bust?

Mr D Little: We are authorised and regulated by the Financial Services Authority. We have to keep very substantial reserves, which need to be ever more substantial as Europe extends its tentacles. The money comes out of our insurance reserves.

Mr Dickson: How many bond situations in Northern Ireland for your clients are in default?

Mr D Little: I am not sure of the exact number. I asked for a report on the amount we have paid in the past couple of years, and it is well in excess of £300,000.

Mr Dickson: That would equate to roughly how many sites?

Mr D Little: I could not say. I can get that information for you.

Mr Dickson: It would be helpful to know.

Mr D Little: I suspect that, as with the Titanic, it is the tip of the iceberg.

Mr Dickson: So, you are not the only player in the field in relation to supplying bonds?

Mr D Little: There always have been builders and developers able to put down cash deposits instead of bonds. In the good days, builders and developers got bonds from their banks or through an insurance product. There are various types of bonds that NI Water and Roads Service will accept.

Mr Dickson: What extent of the industry do you believe to be covered in relation to bonds?

Mr D Little: Again, that is something I am not 100% sure about. I had a conversation with a friend in Roads Service a while ago and he indicated that it may be that we do one third, one third is from commercial sources and one third are still cash deposits.

Mr Dickson: So it would appear that roughly two-thirds of developments are not covered by your warranty.

Mr D Little: We are not the monopoly warranty provider.

Mr Dickson: That is very helpful background information. If we could have more of those statistics, it would be very helpful for the inquiry.

Mr D Little: As I say, if there is any further information I can give you, although some of it may be commercially confidential, I am happy to do that in the right circumstances.

Mr Byrne: Thanks, David, for your submission. My questions have been more or less addressed. However, as Dolores mentioned, there can be confusion for individuals who buy a house and are told it has an NHBC certificate, but, unfortunately, they think that covers the roads and sewers whereas it covers only the house. There has to be some clarification there.

Mr D Little: OK.

Mr Byrne: You slightly addressed this issue, but I want to go back to it. What percentage of the £50 million in bonds that are still live would be invoked and have to be paid out in compensation in the current climate? Lastly, where is the real bottoming out in relation to the problem of unadopted roads?

Mr D Little: It is virtually impossible for me to say what percentage of that £50 million is at risk. I have in my head the names of three or four companies with extensive bond exposure to us that I would be concerned about but it is impossible for me to say that at the minute.

Mr Byrne: With regard to the totality of the £212 million coverage since 1990, what is the totality of the payouts for the bonds that would have been invoked?

Mr D Little: Historically, we have had very low bond calls.

Mr Byrne: Very low, but there has been a problem [*Inaudible.*]

Mr D Little: Well, you cannot make a profit doing something for nothing. The record throughout the UK historically has been that bond calls are very low. It has been nought point nought-something of a per cent.

Mr Byrne: That begs the question whether there has been a reluctance by people who have the authority to invoke the bond?

Mr D Little: No; the situation is that nobody predicted the way the housing market was going to go here. Nobody did. The past five years have been extraordinary. Up until then, 75% of all bonds that we provided were totally cancelled. That indicates that the industry was dealing with its liabilities. Even the bigger builders now are husbanding their cash flow very carefully. If the market improves, the

problem of unfinished development roads will disappear. The rump will be cleared up by Roads Service calling the bonds and getting them done where the builders and developers no longer exist. Where the builders and developers do exist and market improvement happens, cash flow will improve and they will deal with it themselves.

The housing industry in Northern Ireland is largely made up of people who value their reputation more than anything else. Most builders work in their local area and, if they are to continue in business, they cannot afford to let their reputation be damaged. That is the biggest safeguard there is, in some respects.

The Deputy Chairperson: Thanks, David. This is a very complex issue and there may be occasion for us to write to you or speak to you further.

Mr D Little: I am more than happy to do that. Again, with respect, it is possibly not a complicated business. You can distil it to something very simple. I think we can make it more complicated than it needs to be. Thank you very much for your attention.