

Telephone: [REDACTED]
 Mobile: [REDACTED]
 e-mail: [REDACTED]

21 Downpatrick Road
 Crossgar
 Downpatrick
 BT30 9EQ

1 September 2015

Ms Michaela Boyle
 Chairperson of the Public Accounts Committee
 Stormont

Mr Kieran Donnelly
 Comptroller and Auditor General
 Northern Ireland Audit Office

Dear Ms Boyle & Mr Donnelly,

Inquiry into DSD: Advanced Land Purchases

I am conscious that the Report is near completion and thus, having reviewed documentation submitted, I take this opportunity to briefly review two aspects of the issue.

A. DSD and NIHE's viewpoints and attitudes

The following points represent, in summary, some views primarily expressed by officials at the Evidence Session. Where appropriate, some comment has been provided.

- i. The DSD provided no relevant information to the NIAO from July 2013 to July 2014. Its rationale included that it took until August 2014 to deal with aspects related to FOI requests and also the possibility of litigation. Yet, it has both the legal power to require Associations to provide information and also important information could have been easily provided.
- ii. On occasions the PAC was misdirected regarding the Housing Association Guide. **(i)** Reference was consistently made to an 'independent' Planning Consultant's opinion, being in accordance with the HA Guide. Yet, the correct phrasing is "*an appropriate opinion from a Planning Consultant.*" This is not unimportant - the opinion has to be appropriate. **(ii)** Viewed that associations - at the time of the Trinity application - had a "*reasonable time*" to commence work on a site, whereas now expect them on-site within 2 or (with approval) 3 years before recovery of ALP grant. Yet, previously after a time limit of 3 years recovery of the ALP grant could commence. **(iii)** Viewed that after an ALP grant recovery, an association can decide: to continue to apply for planning, sell the site, or develop it for private purposes. Yet, the association is expected to sell the relevant site. No mention was made of this obligation.
- iii. The 'minimal restriction' was viewed (reported by C&AG, Resource Accounts 2013-14) as not precluding further expansion, beyond one dwelling as approved. Yet, the planning issues surrounding this restriction (condition) attached to the one dwelling were key to the refusal of the further attempt to develop the site. It was clearly not a 'minimal' restriction and thus the DSD's comment was seemingly in complete disregard of any consideration of

planning policy. When mentioned at the Evidence Session, information on this issue was to be provided.

- iv. There was lengthy prevarication as to whether or not there had been both a potential conflict of interest on the part of Arthur Canning and also regarding governance aspects within a letter from the Chair of Trinity Housing (19 October 2011). Eventually officials agreed there was both a potential conflict of interest and also that an aspect of the Chair's letter did not represent good governance.
- v. Regarding the number of times the application was recommended for approval, officials referred to, "*some were recommended*", "*were times*" and "*a number of occasions*" when the application went for approval. Yet there was only one recommendation for approval that Mark Graham (NIHE) had correctly described earlier in an email (2 August 2012) as a "*temporary departure*" from the perspective that the application was "*fundamentally unacceptable*."
- vi. View expressed that the decision was taken to recover the ALP grant when approval was granted for one dwelling (February 2014). Yet, recovery was first sought (May 2012) when an application was made for 3 apartments and a second recovery letter issued (March 2013) when an application was made for 1 dwelling.
- vii. View, correctly expressed, that regarding both Helm and Trinity the HA Guide stated that the financial viability of the association had to be considered. Yet while Helm was viewed as having some real difficulties, all funding is being recovered. Whereas in the case of Trinity, circa 75% of the ALP grant is being recovered. Why this discrepancy?
- viii. Views expressed regarding the 'switch' from Design and Build to purchase and then an ALP grant are most unclear. I submitted on 23 January & 9 March 2015 my views on this issue (Sections 6 and 1 respectively) as part of my comments pre and post the Evidence Session. There were clearly several opportunities prior to the Evidence Session for DSD/NIHE to illuminate this issue. Without clarity on all aspects this issue it is most concerning.

Overall: The above points may, in some cases taken individually, not be viewed as important. However, from a collective perspective I believe they demonstrate both an unprofessional and thus unacceptable approach to dealing with the matter. Also, it would appear that the DSD/NIHE have been: unduly sympathetic to the Trinity position, have consequently acted unfairly in favour of one housing association, and acted not in the best interests of the public both financially and also more widely. I believe that the DSD/NIHE warrant robust rebuke within the Report to be soon completed.

B. OakleeTrinity's viewpoints and attitudes

- i. When asked to comment on a meeting between the DSD's Governance Team and Trinity, the DSD's Permanent Secretary (Evidence Session) described it as "*quite a forthright discussion*." Equally, DoE Planning's 'file notes' state that Trinity had; "*expressed strong views*"; felt "*aggrieved that the position had been reversed by the personal intervention of the Divisional Planning Manager*"; "*expressed incredulity at the change of opinion*"; and, "*expressed extreme frustration with the change of opinion*". Clearly, it seems possible that this deliberative planning process led to 'heated' exchanges between the DoE and Trinity, when the latter was confronted with the central tenets of the appropriate planning policy.
- ii. Trinity disputed repayment of the ALP grant as indicated by the following: **(i)** Mark Graham stated (email, 29.06.12) "*Trinity Housing has indicated through its solicitors an intention to apply for a Judicial Review of the decision to seek repayment of the Advance Land*

Purchase grant of £835,215” and (email 22.05.13) “The only thing I can add is that Trinity are disputing the repayment of the ALP.” (ii) C&AG’s Resource Accounts 2012-13 “...the Association has indicated that it is likely to take legal action to prevent recovery.” Yet, when asked at the Evidence Session, why was recovery challenged? The answer was simple; it was merely the timescale to repay that was challenged.

- iii. By contrast, the Evidence Session clarified Helm’s view regarding its position and grant recovery. Namely, *“With great dignity and understanding, they basically organised standing down from work that they had committed themselves to very heavily... [and by comparison with Trinity]...“I want to make it clear that Helm did not take that approach. When we indicated to Helm that we were going to recover the money, it was very willing to sit down and talk to us about the best way of doing that.”*
- iv. DSD’s minute of a meeting with Arthur Canning (12.10.11) stated in relation to the Beverley site that, *“He would only buy from the developer when full planning permission had been secured...”* Yet, Trinity purchased the Crossgar site prior to securing planning permission.
- v. The DSD’s Permanent Secretary’s concluding comment at the Evidence Session regarding both the declaration of interests and also when Arthur Canning knew of the Beverley scheme was, *“That was a core issue in the process...There is a consistency to what he has presented here, and the Committee has heard his evidence.”* Yet, a central part of his rationale regarding his knowledge of the Beverley scheme was related to who was the applicant - the developer or Trinity. However, Arthur Canning’s consistent and clear presentation regarding a core issue is without foundation when compared with the facts. I submitted on 23 January & 9 March 2015 my views on this issue generally (Sections 7 and 4 respectively) as part of my comments pre and post the Evidence Session.

Overall: The above points indicate, for example, that Trinity, compared with Helm, has seemingly acted in a belligerent manner and thus has unfairly benefited financially as a result. More importantly, the clear position that some important statements by Arthur Canning were not based on fact leads one to question the entire credibility of Trinity’s position. Choice Housing’s internal investigation into Corporate Governance in Trinity (to be made available to the PAC) may shed further light on this position. I believe that Trinity warrants robust rebuke within the Report to be soon completed.

Finally, there comes a point and it has been reached when I can convey no more on this long-running and difficult saga. It is now for others to reach a judgment and in that regard I wish you well.

Regards,

Dermot Nesbitt

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