



Department for  
**Social  
Development**

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**REPORT**  
**BY**  
**THE DEPARTMENT FOR SOCIAL DEVELOPMENT**  
**TO**  
**THE PUBLIC ACCOUNTS COMMITTEE**  
**ON**  
**ADVANCED LAND PURCHASES**



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## 1. INTRODUCTION

- 1.1. In his report on the *Department for Social Development Audit of 2013/14 Financial Statement*, the Comptroller & Auditor General (C&AG) for Northern Ireland reported his concerns in relation to two issues relating to specific Housing Associations.
- 1.2. The first issue related to the treatment of Advanced Land Purchase (ALP) grants made to two Housing Associations and the second to the handling of a potential conflict of interest issue within one Housing Association.
- 1.3. This report will seek to provide the Committee with detail on the specific issues highlighted by the C&AG in his report and details of action taken by the Department in relation to these matters.
- 1.4. In doing so, the report explains the key role of Housing Associations as social housing providers in NI, including their status and the regulatory role of the Department. It explains the important role of Advance Land Purchase in enabling and supporting the delivery of the Social Housing Development Programme (SHDP) which is key to the delivery of new social housing across Northern Ireland; examines the particular difficulties which were encountered in relation to two cases and how the Department and Northern Ireland Housing Executive (NIHE) have worked to ensure that public funds have been effectively protected; and finally addresses the handling of the allegation of a potential conflict of interest issue relating to Trinity Housing.

## **2. THE HOUSING ASSOCIATION MOVEMENT**

### **Role of Housing Associations**

- 2.1. The Housing Association movement has been in existence for over forty years and has played a pivotal role in providing social housing across Northern Ireland. Housing Associations are registered charities and 'not-for-profit' organisations. As such, they sit outside central government and the significant investment they make in social housing does not score against departmental spending limits. This brings two major benefits. Firstly it means that our public capital goes much further than it otherwise would as we need to finance only a proportion of the capital costs involved (Housing Associations contribute 50%), and secondly we can therefore respond to housing need in a much more timely way.
- 2.2. Housing Associations attract support from the public purse only for new investment. Their day to day operations, letting managing and maintaining their properties are financed wholly through rent which is reinvested in the acquisition and maintenance of their own stock. Most Housing Associations provide general housing schemes but others are geared to provide housing to a particular social group such as homes for older or disabled people.
- 2.3. The Housing Association movement in Northern Ireland has continued to grow and mature over the last forty years. It has clearly demonstrated that it has made a significant contribution to not only providing much needed social housing but by working with others it has helped build thriving communities.
- 2.4. There are currently 24 Housing Associations with stock levels of almost 40,000 properties with an asset base worth £3.3billion. They employ 3,000 staff with a remuneration value totalling £60m which helps sustain the local economy.

### **Delivery of Social & Affordable Housing**

- 2.5. Taking account of the significant constraints on public spending over the last number of years, since 1996, Housing Associations have been the sole delivery bodies for new social housing in NI. Over the last 7 years, Housing

Associations have provided 11,075 units of social housing, leveraging in £477m of private finance.

- 2.6. Associations in Northern Ireland have out-performed their counterparts across the United Kingdom in terms of relative delivery with a new unit of social housing for every 38 people on the waiting list compared to average ratio of 54:1 in Great Britain. The Northern Ireland Co-ownership Housing Association is the UK's largest and most successful low-cost home ownership provider with around one in five first-time buyers now buying their home through co-ownership, with a current stock of 5,960.

### **Performance at Inspection**

- 2.7. Over the past five years the Department's inspection and governance regime has been very challenging for a number of Associations who have failed to meet the regulatory standards. The current regime has been in place since 2006. It has been in operation for the past 9 years and more recently in 2012, the Department introduced an enhanced programme of inspection regime. The Housing Associations, with support from their affiliated group, NIFHA have worked closely with the Department to agree appropriate action to address the shortcomings of any poor performing Associations. As a result performance across the Housing Association movement has improved significantly with the number of failed Associations reducing from 14 in March 2010 to 4 currently, (these are relatively small and are not engaged in the Social Housing Development Programme and therefore do not attract development grant).
- 2.8. The Comptroller & Auditor General for Northern Ireland (C&AG), commented on this improved performance in his General Report (2014) where he stated: *"I am pleased with the continuing improvement in governance arrangements within the Housing Association sector generally, which has now been in place for a number of years and has been driven in large by the efforts of DSD's Governance & Inspection team"*.

### **Financing of Housing Associations**

- 2.9. Housing Associations are funded from a variety of sources. Rental income is generated from their tenancies and this is used to fund the day to day running

costs of the Association as well as maintaining their existing housing stock. They also source private finance from banks and obtain grants for social housing development from the Department to provide new social housing units. The grant rate for new build development is currently set at around 50%.

- 2.10. The robust organisational capacity, governance and controls currently being demonstrated across the Housing Association movement have been instrumental in maintaining the confidence of private funders in the sector. This is demonstrated by a number of Associations being able to secure private finance at competitive rates. For example, over the last two years, three of the major developing Associations: Clanmil, Oaklee/Trinity and Apex Housing Associations secured almost £60m in private finance to assist the delivery of the Social Housing Development Programme (SHDP). Apex Housing Association has also recently been awarded A+ credit rating from Standard & Poor's - one of the world's two major credit ratings agencies.

#### **Tenants Satisfaction**

- 2.11. The Housing Association movement is committed to providing efficient and effective service delivery to all their tenants. A number of the Associations subscribe to various international recognised quality standards, i.e. the Quality Standard ISO 9002, to ensure that the service it provides is delivered to the highest standards. They obtain regular feedback from their tenants and promote choice through consultation, participation, and the service review process to ensure continued satisfaction with the Association's service delivery. The current level of customer satisfaction for the sector is 87% which is similar to Northern Ireland Housing Executive's level of 88%.

#### **Evolving Structure of Housing Associations**

- 2.12. Over the past four years a number of Associations have decided to enter into a merger or group structure arrangement with another Association, a common trend throughout the UK. There are a range of financial and commercial drivers for these mergers, including failed inspection, however many Associations have simply recognised that, as a 'stand alone' Housing Association, they may not have the organisation or financial capacity to play a

material role in responding to the significant social housing delivery challenges they face.

- 2.13. In response to these challenges, the movement has successfully strengthened the sector by influencing those poor performing Associations who could no longer demonstrate their 'Fitness for Purpose', now or in the future and encouraging mergers with stronger Associations. This arrangement also provided support to those struggling Associations who simply needed the additional skills, expertise and resources offered by way of a group structure. The C&AG's General Report (2013) noted "*Significant*" improvements in the performance of Housing Associations.

### **Housing Strategy for NI**

- 2.14. In taking forward the 'Housing Strategy for NI', the Department continues to engage the Housing Association movement to play a leading role in the delivery of a number of initiatives e.g.

#### **(a) *Building Successful Communities***

Building Successful Communities is a programme to regenerate communities using housing intervention as one of the main catalysts for local regeneration. The Housing Association sector is playing a key role in developing solutions that will reverse decline and create more sustainable communities.

#### **(b) *Together – Building United Communities***

Housing Associations are playing a key role in helping establish ten new shared housing schemes and four urban village schemes.

### 3. REGULATION OF REGISTERED HOUSING ASSOCIATIONS

#### **Status**

- 3.1. Housing Associations are social enterprises, registered as charities, and “*not for profit organisations*”. As such, they are clearly distinct from the public sector. Throughout the United Kingdom, and increasingly in the Republic of Ireland, they provide a key role in the provision of social housing and looking after tenants’ needs. With their access to sources of private borrowing which is not available to the public sector, they have enabled the significant development of new social housing, and have demonstrated a strong capacity to work with tenants and communities to greatly enhance social housing and wider social provision. Attached at **Annex A** are the key metrics of the sector.

#### **Role of Inspection**

- 3.2. The Department for Social Development is the Regulatory Authority for Registered Housing Associations and is required to “exercise supervision and control over Registered Housing Associations”. In 2006 the Department established its new regime of inspection with the introduction of its Regulatory Framework. This was seen as an opportunity to both enhance the Regulatory Regime and support improved performance within Housing Association movement at a strategic level.
- 3.3. A robust regulatory framework should improve output and promote quality, continuous improvement and good practice. In order to achieve this, the main goals of the regulatory framework are to:-
- increase the **accountability** of registered housing associations.
  - ensure that they are properly *governed* and operating **financially viable** organisations;
  - authenticate that all housing associations **manage risk** effectively;
  - enable the Department to demonstrate the **proper use of public funds** and the effective implementation of public policy;
  - verify that housing associations achieve an **acceptable level of performance** against agreed standards;



- establish whether associations deliver **continuous improvement** and value for money in their services;
- safeguard the **rights** and **interests** of residents.

### ***Challenge of the Regulation and Inspection Regime***

- 3.4. Since the introduction of the new inspection regime in 2006 the process has evolved into a more focussed, integrated process which takes into account the size, scale and risk posed by or to individual Associations, the nature of an Association's business activities, its approach to risk management and its past performance at inspection. The scope of each inspection includes an examination of the arrangements in place for each of the key activities of the Association, Finance, Property Development, Property Management, Housing Management and Governance.
- 3.5. The initial round of Inspections (Round 1) in the period up to 2010 identified a significant level of weakness across all activities in a number of Housing Associations; as a result over 40% of the Associations failed the Round 1 inspection (see **Annex B** for further analysis).
- 3.6. In recognition of the increased risk posed by Associations with a failed inspection, the Department excluded all such Associations from the Social Housing Development Programme and hence access to Housing Association Grant. This exclusion remained in place until the Associations concerned were able to demonstrate that they had effectively addressed all the inspections issues by achieving a satisfactory assurance rating.

### ***Impact of Regulation and Inspection Findings on Associations***

- 3.7. Clearly any Association that failed an inspection faced exceedingly tough decisions in relation to their viability and whether the future of the Association could be sustained in its current format. Decisions were required around board and management structures, potential changes in personnel and the consideration of options around group structure or merging with other Housing Associations.

- 3.8. The Department has no powers to enforce such actions unless it launches an independent inquiry. However it has successfully managed to work with Boards to encourage and support them to take the necessary steps required to ensure the future viability of an Association, including maintaining tenant services and lender confidence without applying the statutory inquiry process.
- 3.9. The Inspection Team worked closely with each of the Associations which have failed in an inspection and NIFHA to determine the most appropriate course of action to protect tenant services, safeguard the Association's assets, address the inspection findings and protect the public purse. The experience of the Team has been that the boards and management of the Associations involved were prepared to take the tough decisions that were required. These have included:-
- (a) Restructuring of Senior Management Teams, including a number of Chief Executives, and senior managers changes;
  - (b) Complete restructuring of Board membership, including full replacement; and
  - (c) A number of Associations deciding to either merge or enter into group structure.

### ***Current Inspection Regime***

- 3.10. Following the outcomes of the Round 1 inspections at the end of February 2009 and in particular the lessons learned from the Helm inspection in 2011/12 the Team has placed a greater focus on the role of the Board. Since 2012, the Inspection regime has evidenced increasing improvement in the performance of Housing Associations. Where difficulties remain, these are mainly in a few small Associations, primarily with regard to the management of their stock. These Associations however are not developing new housing and hence do not access Housing Association Grant.
- 3.11. The table at **Annex B** highlights the improved performance across the Housing Association movement since the First Round of the new regulatory inspection regime. The table indicates that the percentage of Housing Associations who have failed the inspection has decreased from 42% to 15%.

In the area of Property Management (an area that would be viewed as their core business) failure has reduced significantly from 42% to 3%. There are currently only four Associations who have failed to meet the standards compared to 14 Associations in 2009.

### ***Supporting Housing Associations / Promoting Best Practice***

- 3.12. The Governance & Inspection Unit within DSD Housing Division has continued to support the Housing Association Boards and Management Teams across the movement and promote 'Good Practice' that it identifies across the housing sector. This has included:-
- Publishing all inspection reports on the DSD website;
  - Publishing Summary Reports and Lesson Learnt Reports on the DSD Website;
  - Holding a series of workshops in liaison with NIFHA, highlighting 'Best Practice' across the five areas of inspection;
  - Providing Governance Training to Boards and Board Members.
  - Providing training on a one to one basis to individual staff members in Associations on areas of Property Development and Property Management.

## **4. Advance Land Purchase (ALP) Grant**

### ***Background to ALP Scheme***

- 4.1. The advance purchase of development sites by Housing Associations for social housing was introduced in 2003 and plays a key role in ensuring delivery of the Social Housing Development Programme (SHDP) and the priority that the Assembly places on ensuring that social housing need is addressed. The scheme is administered by the Northern Ireland Housing Executive (NIHE). The Northern Ireland Executive places a higher priority than in any other part of the United Kingdom in the delivery of new social housing, and has a proportionately more significant programme than anywhere else.
- 4.2. One of the key impediments to the timely delivery of the annual Social Housing Development Programme is the availability of land for development. It is a common practice across the United Kingdom for Housing Associations to develop and maintain land banks for the purposes of future development (indeed this is common practice across the House Building Sector). The Department and the Northern Ireland Housing Executive has therefore encouraged and supported Housing Associations to build up a bank of available land, working within the statutory requirements. This is key to achieving the ambitious targets that have been set. The ideal position would be for Housing Associations to invest in and build up a land bank to a position where all land for future schemes will have been acquired in the year ahead of construction start, thus supporting timely delivery of schemes on the ground.
- 4.3. To support this, the facility to pay Advance Land Purchase Grant (ALP) was first introduced in 2003. Its purpose was to:
  - Facilitate Associations acquiring in advance, the land element of schemes due to start on site in Years 2 and 3 of the Programme – (thus securing the land for development and reducing the possibility of the Association losing the site); and

- Reduce the risk on Associations of increasing development costs during any protracted planning delay from Acquisition stage to Start on Site stage.

4.4. Associations apply for grant by way of an ALP application. The process for this application is attached at **Annex C**. When the NIHE (DPG) approves an application for the advance acquisition of land, the Association can access the Acquisition Tranche of Housing Association Grant to acquire the land. The grant available at Acquisition Tranche stage will be in respect of land purchase only and will be paid at 100% of the actual qualifying land value plus 5% of the total on-costs.

### ***Private Finance***

4.5. Associations are also required to secure private finance to supplement the amount of grant provided to fund housing schemes and land purchases. Housing Associations who participate in the Social Housing Development Programme have secured almost half a billion pounds (£477m) in private finance over the past seven years to contribute to the delivery of these schemes. Without this additional finance the number of units of social housing delivered each year would be drastically reduced.

4.6. Associations are required to submit a package of supporting documentation to the financial institutions before approval of private finance is approved. These include robust business plans, accounts, financial projections and business cases. Approval of borrowing is also required from the Department.

### ***Success of ALP Scheme***

4.7. Housing Associations are the sole vehicle for delivering the Northern Ireland Executive's ambitious Social Housing Development Programme. One of the initiatives that has supported the successful delivery has been and remains the Advanced Land Purchase Scheme. It is an important and valuable vehicle for securing early ownership of land which enables Housing Associations to deliver successful social housing schemes at an annual pace and scale that could not otherwise be achieved.

- 4.8. Since the introduction of the scheme in 2003, a total of 74 Advanced Land Purchases equating with 2481 units of social housing have been approved, of which 57 equating to 1613 units of social housing have been achieved or are currently on-site. Of the remaining 17 schemes, 15 equating with 725 units are programmed to be delivered during the remainder of this financial year and next, with the remaining two ALP's being the Trinity and Helm schemes.
- 4.9. The Trinity site at 19 Downpatrick Road, Crossgar and the Helm site at Great George's Street are the only two ALPs out of 74 which have been paid but have not lead to an on-site development because of unresolved difficulties primarily within the planning system and Roads Service proposals for a new interchange at York Street, both of which have been referenced in the C&AG report.
- 4.10. The Department and NIHE have reached agreement with the Associations for the return of the resources provided for these purchases that in both cases protects the tax-payer and tenants, in a way which does not financially destabilise the Associations.

## **5. HELM ADVANCED LAND PURCHASE – GREAT GEORGES ST, BELFAST**

### ***Background to Purchase***

- 5.1. In April 2007, the Department paid a grant of £8.1 million to Helm Housing Association for the purchase of a site in Great Georges Street, Belfast on the basis of a mixed housing scheme of 131 units of social housing and 69 Private units which was included in the Social Housing Development Programme with an anticipated onsite date of June 2008. For a variety of reasons, including a subsequent Roads Service proposal for a major roads network upgrade at this location, Helm was not able to develop social housing on the site.

### ***Planning Approval***

- 5.2. In the intervening period Helm Housing Association has been attempting to find a resolution which would enable the scheme to go forward and deliver social housing in an area of high need. The main reason for failure to deliver a scheme at Great Georges Street was due to the Roads Service proposals for a new interchange at York Street. These proposals were formally released in June 2011 for consultation by the Transport Minister and announced as the preferred option in December 2012. The proposals confirmed that part of the site would be required for the interchange.
- 5.3. Helm looked at a number of options in relation to the site including a land swap with DRD, but the proposed changes to the road infrastructure made it impossible to develop a suitable scheme.

### ***Agreed Settlement***

- 5.4. As the delivery of a social housing scheme was unsuccessful, the NIHE wrote to Helm Housing Association in March 2013 advising them that they were minded to recover the grant. During a series of discussions between Helm and NIHE, Helm suggested a number of measures whereby the issue could be fully resolved to the satisfaction of both NIHE and the Department. The proposal involved a combination of measures including sites in Helm's ownership being developed at no cost to the public purse and the Association developing other schemes at reduced grant rate. Helm indicated that this

proposed settlement would deliver the desired outcome by the end of 2016/17. NIHE and the Department were content that the proposal met their requirements and a settlement plan was signed with them in July 2014. In terms of progress to date, one of the new Helm schemes has gone on-site at the end of December, at no cost to the public purse which has realised £1,453,390 of the settlement.



## **6. TRINITY ADVANCED LAND PURCHASE – 19 DOWNPATRICK RD, CROSSGAR**

### ***Background to Purchase***

- 6.1. In 2006, the Department compiled the new build, three year Social Housing Development Programme based on the housing need identified through the Northern Ireland Housing Executive waiting list. The areas are prioritised into those of greatest need and notified to Housing Associations who are asked to seek suitable sites on which social housing schemes could be developed. This information enables Associations to determine which areas they should be researching to locate possible sites or purchases of properties to meet this need. That programme contained an identified need for 10 units of New Build in Crossgar.
- 6.2. In 2007, Trinity Housing Association was approached by a Contractor Developer who had a number of sites that had the potential to be developed into social housing schemes. One of those sites was located at Downpatrick Rd, Crossgar. The Association contacted the NIHE's Area Planner who was able to confirm support for the provision of 6 general needs houses and 6 apartments. On receipt of this support the Association approached the Department on 30 January 2007 and asked if this scheme could be submitted into the Social Housing Development Programme as a 'Design & Build' scheme for delivery of 12 units. On 15 March 2007, the Department wrote to the Association asking for the scheme to be submitted as an Advanced Land Purchase.
- 6.3. Trinity Housing Association corresponded with the Department on the purchase of this scheme up until April 2007, when responsibility for the Social Housing Development Programme transferred to the NIHE. All correspondence after that date was with the NIHE.
- 6.4. Trinity Housing Association's application for ALP grant on a site at 19 Downpatrick Road, Crossgar was approved by NIHE on 28 January 2008. ALP grant of £835,215 was paid to the Association on 27 February 2008 in line with Departmental guidance. Trinity Housing Association engaged an

independent planning consultant as required by the Housing Association Guide. The independent Planning Consultant's Report suggested that the proposal to construct 8 no. 2 bedroom apartments and 4 no. 3 bedroom townhouses on this site would be broadly acceptable to the Planning Service.

### ***Planning Approval***

- 6.5. The Association had understood that a recommendation to approve permission for a development of 7 units was to be submitted to the April 2012 Council Meeting. Before this was submitted responsibility for development control moved from the Local Area Planning Office in Downpatrick to Craigavon where the application went into a further process of consideration and discussion with the Planning Service.
- 6.6. In the intervening 5 year period, the Association has been actively involved in a prolonged process with the Planning Service in an effort to secure planning approval to develop the site. During this period, the planning application had been amended several times reducing the number of proposed units from 12 to 10 units (January 2011), 7 units (December 2011), 3 units (April 2012), 1 unit (February 2013), this was approved in July 2014. In October 2014 Trinity submitted a new application for one unit of 7 apartments; we understand no final decision has been reached as yet by the Planning Service on this application.
- 6.7. The current Housing Association Guide requires development work to commence within two years after the ALP has been approved and grant paid. On 22 May 2012, the NIHE wrote to Trinity Housing Association, indicating that it was minded to recover grant as the scheme had not achieved on-site commencement but indicated it would reconsider this position if the Association could or had obtained planning approval.

### ***Legal Action***

- 6.8. The decision to seek recovery was challenged by Trinity Housing, through their solicitors, on 29 May 2012. The NIHE (Head of Legal Services) responded on 9 July 2012 confirming that NIHE would await the outcome of

the planning application for 3 units before reviewing its decision. This was subsequently amended to 1 unit (see Para 6.6) .

- 6.9. In light of this NIHE subsequently wrote to Trinity Housing on 29 March 2013 indicating its intention to initiate the grant recovery process. This was on the basis that the Association had failed to deliver a viable housing scheme and as a consequence had failed to complete a scheme within a reasonable time.
- 6.10. Trinity's solicitors wrote to NIHE on 26 April 2013 and requested (under FOI) all documentary evidence held in relation to the decision to recover and details of all ALP funded schemes in the last 6 years.
- 6.11. The NIHE wrote to Trinity on 29 September 2014 to advise of the decision to seek recovery of the grant paid with a suggestion to meet with DPG as soon as possible to discuss a suitable method of recovery within the next 90 days.

#### ***Agreement Settlement***

- 6.12. The Association responded on 4<sup>th</sup> December 2014, stating their intention to "seek an acceptable compromise". This recovery will be made through a combination of offsetting against future social housing schemes and some deductions claimed by the Association for costs incurred which would be "valid deduction" under scheme rules. The finer detail of this has yet to be worked through.

## **7. CONFLICT OF INTEREST / WHISTLEBLOWING INVESTIGATION INTO PURCHASE OF LAND AT 19 DOWNPATRICK ROAD, CROSSGAR BY TRINITY HOUSING ASSOCIATION AND A PROPOSED DEVELOPMENT IN BEVERLY HEIGHTS NEWTOWNARDS**

### ***Issue***

- 7.1 In his 2013-14 report attached to the DSD Financial Statements, the C&AG reported that an issue had come to his attention from a member of the public, in relation to the handling of a potential conflict of interest relating to the purchase of a site in 2007, in Crossgar by Trinity Housing Association (HA) from a Developer. The Department understands that this issue may be of interest to the Committee as part of its consideration of the issues of ALPS.

### ***Allegation***

- 7.2 The NIAO had written to Will Haire, Permanent Secretary in July 2013 (Copy of letter attached at **Annex E**) advising him that they had received an allegation from a 'whistleblower' that at the same time Trinity Housing Association was accessing ALP grant to purchase a site in Crossgar from a Developer in 2007, the same Developer was also in the process of buying another site at Beverley Heights, Newtownards. This purchase also included the purchase of a property from the owner who was closely related to the Chief Executive of Trinity, which was alleged by the 'Whistleblower' to appear to be a potential conflict of interest.

### ***Background***

- 7.3 In relation to this allegation, there has been protracted correspondence between the local residents group, Beverley Residents Action Group (BRAG) and several business areas within the Department since 2006. The Group is consistent in the issues they raise, namely their concerns about building social housing in their area and despite meetings with Departmental Representatives and extensive correspondence providing them with explanations on the issues raised, they appear unable or unwilling to accept them.

- 7.4 In response to concerns raised by this Group, the Governance & Inspection Unit was asked to look at this issue in October 2011, when it was carrying out an inspection of Trinity Housing Association's development activities. The Inspection Team met with the Chief Executive of Trinity in October 2011 regarding the purchase of his brother's house and the alleged conflict of interest. He confirmed that he only became aware that his brother had sold his property to the Developer when the local residents' group, Beverley Residents Action Group (BRAG) wrote to him in April 2009, after the sale at Beverley Hts had been completed.
- 7.5 Although the Chief Executive was confident that there was no conflict of interest, he reported the matter to the Chair of his Board because of what he believed could be perceived as a connection to the sale of his brother's property. The Chair of Trinity Housing Association subsequently confirmed the sequence of events around this matter and had advised that the Board and he were satisfied that everything was handled properly. This was subsequently confirmed to the Governance & Inspection Team via a letter from the Chair of the Association. Taking all the evidence into account, the Governance & Inspection Team concluded that there was no evidence to substantiate the allegations made.
- 7.6 On receipt of a letter from the NIAO dated 11<sup>th</sup> July 2013, the Department responded to the NIAO on 1<sup>st</sup> August 2013, advising that the Inspection Team had previously carried out two investigations into this issue and had concluded that at the time of their inspection there was no evidence to support the allegation as Trinity Housing Association had not been involved in the sale of the Chief Executive's brother's property at Beverley Hts, Newtownards and also although interested in attaining the Newtownards site for social housing, the Association had still not purchased the site from the Developer; therefore there were no issues of concern.
- 7.7 In response to this letter the NIAO provided additional information in October 2013 that had been received from the "Whistleblower". On receipt of this information, the Inspection Team met with the Chief Executive of Trinity in November 2013. He stated that he had nothing further to add to what he had

previously said and that he was not prepared to answer any further questions until he had sight of the documentation held by both NIAO and the Department in relation to the allegations against him.

- 7.8 Following this interview a series of Freedom of Information (FOI) requests were received from a number of interested parties which delayed further process on clearing the three areas the NIAO had raised– see **Annex D**. The questions raised by the NIAO were put in a letter to the Chief Executive on 8<sup>th</sup> October 2014. A response via the Chief Executive’s solicitor was received on 18<sup>th</sup> November 2014. In this response the Association provided evidence in the form of an e-mail in March 2007 from the Department to Trinity asking them to submit this scheme as an Advanced Land Purchase for 2006/07 Social Housing Development Programme. It was this request which lead Trinity to purchase the Crossgar site. This information has been passed to the NIAO.

### ***Summary of Inspection Team’s Findings***

- 7.9 The basis for the allegation of a conflict of interest is that in buying the site at Crossgar, Trinity provided the funds to the developer to enable him to buy the property at Beverley Heights, Newtownards which was owned by the Chief Executive’s brother.
- 7.10 The Chief Executive has stated that he was not aware that his brother’s house was sold until he received correspondence from the Beverley Rights Action Group in 2009. There is evidence to confirm that the Chief Executive advised his Chair of the allegation of conflict of interest at that time and the Chair has confirmed that the Trinity Board was content.
- 7.11 Based on the evidence available to date and the Governance & Inspection Teams investigations, the Department has not been provided with any evidence to uphold the allegation.

## **8. CONCLUSION OF ISSUES RAISED BY NIAO**

### **Issue 1 - Advanced Land Purchase Scheme**

- 8.1 In his annual report the C&AG has highlighted to the Public Accounts Committee his concerns around the Advanced Land Purchase scheme. He cited two examples where the Housing Associations in question namely Trinity and Helm received payment of housing grant to purchase land at Great Georges St in Belfast and at Downpatrick Rd, Crossgar with a view to delivering social housing schemes on these sites but failed to deliver.
- 8.2 The reasons why the Associations were unable to deliver schemes on these two sites has been clearly documented in sections 5 & 6 of this report. The report also notes the success of the ALP scheme and its centrality to the delivery of the Northern Ireland Executive's social housing programme.

### ***Assurances***

#### ***(a) Risks Managed***

- 8.3 To achieve the Northern Ireland Executive's ambitious Social Housing Development Programme, the Department along with its colleagues in Northern Ireland Housing Executive have worked closely with the Housing Association movement to look at innovative ways of delivering more units of social housing within Northern Ireland.
- 8.4 During the property boom era in 2006, one of the areas highlighted was difficulty in securing suitable sites and Associations felt that by land banking sites this would enable them to move quicker on delivering schemes if the land was in their ownership. As a result the Department encouraged the use of the Advanced Land Purchase scheme which enabled associations to purchase the land element of schemes up front by accessing grant.
- 8.5 As previously documented in section 4 of this report, the ALP scheme has a proven track record of delivering 57 new housing schemes equating with 1613

units with another 15 schemes (725 units), due to be delivered in the next 15 months.

- 8.6 One of the key conditions for the payment of an ALP is that the risk is borne by the Housing Association. If the scheme does not come to fruition (as in Great Georges Street and Crossgar schemes) then the grant paid to purchase the ALP will be recovered. There have only been two cases where Associations have been unable to deliver the schemes and agreements have been reached in both these cases to have the grant repaid to the Department. It is the Department's view that this clearly demonstrates that the potential risk is being managed effectively.

***(b)Regulation of Associations***

- 8.7 The Department has a robust regulation regime in place which the C&AG has commended in previous annual reports. It has also clearly demonstrated its success in recognising and highlighting areas of poor performance and monitoring remedial action to ensure issues of concern are adequately addressed.
- 8.8 The Department has produced reports and held workshops and fora to share their findings across the housing movement both on 'lessons learnt' and 'good practice'. It has also been instrumental in mentoring Boards and Senior Managers through the inspection process to enable them to turn their Association into a 'Fit for Purpose' organisation.
- 8.9 The inspection regime has ensured that Associations are acutely aware of the importance of managing risks in all areas of their activities, with a particular focus on development activities in light of the Helm inspection report. This is an area that is scrutinised very closely by the Governance & Inspection Team who will check to see that Boards are managing risks and offering a suitably strong challenge function.
- 8.10 It is however important that the Department is not seen to micro-manage Associations and that regulation is proportionate to the size and activities of the individual Association, however balancing that is need to regulate



Associations on behalf of tenants and the taxpayer in relation to the payment of public grants.

***(c) Conditions of Grant***

- 8.11 There is a strong process in place for the application and payment of grant for all schemes including the Advanced Land Purchase Scheme. Before an Association can access grant there are a number of procedures to be followed and conditions to be met before any grant is provided.

**Planning Permission**

- 8.12 There may be a misconception that an Association is foolhardy or risk complacent if they purchase land without planning permission. This is simply not the case. Housing Associations who apply for housing grant are required to meet a number of pre-qualifications as set out in the Housing Association Guide. As stated in para 1, of Annex C, planning approval is not a prerequisite for an application for grant but Associations must certify that the proposed purchased would be suitable for social housing and that proposals would be broadly acceptable to Planning Service. To support these certifications most Associations will engage the services of a Planning Consultant and all Associations will be required to provide evidence that they have actively engaged with the Planning Service by way of a Pre-Application Discussion (PAD).
- 8.13 If Housing Associations were only permitted to access grant for ALPs on the basis of having obtained planning permission, given the timescales involved, it would be impossible to operate the ALP scheme under these conditions. In establishing that the proposal would be broadly acceptable to Planning Service, the Associations are mitigating the risk of acquiring sites without full planning permission. The Department considers that this is an acceptable mechanism to aid the delivery of the Social Housing Development Programme.

**Bidding for Sites**

- 8.14 Again there may be a misconception that a number of Associations can enter into a bidding war for the same piece of land resulting in developers playing

one Association off against the other. This simply cannot happen. Once an Association identifies a site they are interested in purchasing, they are required to register that site with the Northern Ireland Housing Executive.

- 8.15 The purpose of the site registration system is to prevent unnecessary duplication of effort by two or more Associations investigating the development potential of the same site. Site registration allows one Association time to investigate the site's potential and reduces abortive work in the preparation of schemes to the minimum; therefore this process prohibits other Associations from entering into any negotiations in relation to the purchase of the same site.

### **Purchase Price of Sites**

- 8.16 When applying for grant for any scheme or ALP an Association is required to provide a valuation undertaken by either the District Valuer of Land and Property Services or an independent qualified valuer.
- 8.17 The valuation should be based on the valuation and reporting requirements laid down in the Royal Institution of Chartered Surveyors (RICS) 'Red Book standard'. The will ensure that Associations are advised of the current market value, the future potential of the site and any potential constraints on the site. A copy of this valuation is supplied with the scheme application for grant which certifies that:-
- *The purchase price does not exceed the value of the property as assessed by an independent qualified valuer'*
  - *The Association provided details of all relevant site constraints etc, as set out in DSD's template (HA Brief to Valuer), in its instructions to the valuer. The valuation report has been examined to ensure these have been taken into account and are documented in the report provided.*
- 8.18 It is the Department's view that any risks associated with an Association purchasing land in excess of its worth are managed and mitigated through the certification requirements of the grant application process.

## **Issue 2 - Recovery of Helm / Trinity Advanced Land Purchase Grant**

8.19 The NIAO has raised their concerns in relation to the payment of ALP's for two schemes namely Great Georges Street, Helm Housing Association and Downpatrick Rd, Trinity Housing Association. Concerns centred around two areas:-

- (a) The delay in recovering the grant;
- (b) The decision not to apply interest to the recovery.

### **(a) Delay in Grant Recovery**

8.20 The guidance at the time both these ALPs were approved required the Association to certify that if the ALP scheme did not achieve a start on site date within a reasonable period from the ALP approval date, the ALP would be repaid.

8.21 Although both Associations were unable to deliver social housing on these sites within the three year deadline, the Department and the Northern Ireland Housing Executive were kept abreast of the strenuous efforts made to try and resolve the obstacles that prevented the progression of these schemes.

8.22 The Trinity scheme has been redesigned and resubmitted to the Planners on four occasions. On the Great Georges St scheme, Helm attempted to negotiate a land swap with DRD.

### **(b) Interest**

8.23 NIAO has raised their concerns in relation to the Departments decision not to apply an interest charge to the amount to be recovered from the two ALPs. Regarding the charging of interest in the recovery of the grant paid, the Departments position is stated at paras 4-7 of Annex C. In the case of the grant recovery for the Great Georges Street ALP, the Department was content that as the ALP had been properly paid and spent on land acquisition with no financial benefit to the Association and that it fell to be recovered because of a failure to obtain planning permission and emerging road development proposals, there was no overpayment of Grant therefore interest should not be applied.

8.24 NIAO sought further clarification on this issue and recommended that the Department should obtain a legal opinion to clarify the position on how and when it should charge interest, taking into account the requirements set out in the Housing Association Guide and the legislation. Legal advice was sought from the Departmental Solicitor's Office who has confirmed that they are content with the Departments approach. The Department therefore considers the action taken to be right and proper in the circumstances.

### **Issue 3 – Conflict of Interest**

8.25 NIAO has raised its concerns and those of the 'Whistleblower' in relation to purchase of a site at Downpatrick Rd, Crossgar by Trinity Housing Association. Their concerns centre around the fact that that the 'Whistleblower' alleges that Trinity Housing Association bought the site at Crossgar from a Developer, who in turn used the money from this sale to purchase a property owned by the brother of the Chief Executive of Trinity.

8.26 As outlined in Section 6 of this report, the Department has carried out two investigations into the Whistleblowers allegations and has found no evidence to support that there is any substance to the suspicions raised. Evidence provided by Trinity would support that once the Chief Executive became aware of a potential conflict of issue, namely the sale of his brother's house, he immediately notified his Chair who subsequently confirmed this to the Department in a letter.

8.27 The Association also provided evidence which confirmed that the Department had written to the Association in March 2007 and asked them to submit the scheme as an ALP, therefore the purchase of the site at Crossgar by this means was prompted by the Department and not by anyone within Trinity Housing. It should be noted that the need for social housing in Crossgar had already been identified in the Social Housing Development Programme 2006/07 (see para 6.1) and when Trinity had identified a suitable scheme in the area, they approached the Department in January 2007 to have the scheme inserted into the current development programme (see Para 6.2).

8.28 Based on the evidence available to date and the Governance & Inspection Teams investigations, the Department has not been provided with any evidence to uphold the allegation.

## ANNEX A

Housing Association	Total Stock (at 31/03/14)	Is Assoc Currently Developing Yes / No
Oaklee Trinity	7895	Yes
Fold	6005	Yes
Helm	5463	Yes
Apex	4215	Yes
Clanmil	3530	Yes
Habinteg	2123	Yes
Ulidia	1214	Yes
South Ulster	1036	Yes
Alpha	960	Yes
North Belfast	903	Yes
Connswater	725	Yes
Triangle	679	Yes
Woodvale & Shankill	462	No
Newington	455	Yes
Rural	420	Yes
Open Door	407	Yes
Abbeyfield & Wesley	330	Yes
Ark	324	Yes
Craigowen	323	No
Grove	218	No
St Matthews	198	Yes
Hearth	98	Yes
Covenanter	42	No
NICHA	0	No
<b>TOTAL</b>	<b>38025</b>	

## ANNEX B

<b>COMPARISON OF INSPECTION FINDINGS IN ROUND 1 - V – ROUND 3</b>				
	<b>Round 1</b>		<b>Status at April 2014</b>	
	No	%	No	%
Total Number of Associations	<b>33</b>	-	<b>27</b>	-
Total Housing Association Stock	29,638	-	35,971	-
Total Number Associations that failed overall	14	<b>42%</b>	4	<b>15%</b>
Total Stock with overall failed inspection rating	6,111	21%	1,132	3%
Total Stock with Prop Mgt having a failed rating	12,322	<b>42%</b>	1,132	<b>3%</b>

**ANNEX C**

## ADVANCED LAND PURCHASE APPLICATION PROCESS

### ***ALP Application***

1. Housing Associations who apply for ALP grant are required to meet a number of pre-qualifications, as set out within the Housing Association Guide. Planning Approval is not a prerequisite for an application for ALP grant, however, Associations must certify that:
  - The scheme proposals would be broadly acceptable to Planning Service, subject to a detailed Planning Application being made; and
  - A note of the various Association / Consultant contacts and matters discussed with Planning Service on the site and proposals is retained on the Association's file for audit purposes.
2. As a minimum, this contact will require evidence of liaison with the Planning Service or an appropriate opinion from a Planning Consultant to ensure that the site is suitable for housing use and that the proposals would be broadly acceptable.
3. With effect from 1 October 2012, the Housing Association Guide was amended to require Housing Associations to consult with the Planning Service via a Pre-Application Discussion (PAD) in order to ascertain that its development proposals are broadly acceptable. This was changed as the requirement previously was only to obtain the views of a private planning consultant.

### ***Recovery of Grant if schemes do not proceed***

4. It is important to understand that when Housing Association Grant (HAG) is paid in respect of ALP it has been properly paid in line with the requirements of grant entitlement at that time. The fact that an ALP scheme fails to come to fruition does not indicate that the Association has done anything wrong it simply means that the development opportunity has failed to materialise. This possibility is recognised at the outset, where one of the key conditions imposed is that grant will be repaid if the development does not proceed.



5. There are two decisions to be made in such events. The first decision relates to whether or not the scheme will develop out. If the development of the scheme appears improbable the decision will be made to consider recovery of the grant, which will involve discussions with the Association over the terms of the recovery.
6. The second decision relates to whether or not interest should be charged. Under the legislation interest would not be payable earlier than the relevant event, (Housing Order (NI) 1992 Article 35 (6) (b) below refers).

***(6) A direction under paragraph (2)(c) requiring the payment of interest on the amount directed to be paid to [he grantor] shall specify in accordance with paragraph (8)—***

***(a) the rate or rates of interest (whether fixed or variable) which is or are applicable;***

***(b) the date from which interest is payable, being not earlier than the date of the relevant event; and***

***(c) any provision for suspended or reduced interest which is applicable.***

7. In the case of ALPs the “relevant event” is the date the Department determines that the grant falls to be recovered. The rationale for this is as stated in paragraph 4, i.e. while there remains the possibility for the scheme to develop out, the payment of grant is in order.

## **NIAO QUESTIONS PUT TO ARTHUR CANNING – CEX OF TRINITY HA**

1. The Developer bought the Crossgar site in February 2007 and in March 2007 Trinity sought support from NIHE for the development of 12 social housing units on the site. At that time it appears that the intention was that the development would be a 'Design and Build' arrangement, i.e. that the developer would build the social housing on the site and then these completed units would be purchased by Trinity.

However this appears to have changed when Trinity purchased the site in August 2007 with the intention of developing the 12 units itself. This change from Design and build to a purchase arrangement which transferred the risk of ownership (i.e. that land values would fall) from the developer to Trinity. Bearing in mind that Design and Build procurement rules did not change until 2009, can you explain why Trinity chose to purchase the site in August 2007?

2. The purchase of the land in Crossgar by Trinity from the developer in the same month as the same developer was also purchasing your brother's house in Beverley appears to give rise to a conflict of interest which should have been communicated to Trinity's board at that time. This was not done and you had previously explained this by stating that you did not know that your brother had sold his property until circa April 2009 when this was communicated by the Beverley Residents Group. Can you explain why you would not have been aware that your brother would have sold his house at Beverley for some 18 months after it was sold?
3. You advised the Trinity Board in 2009 of the potential conflict of interest. Can you please confirm the following:
  - When did the Board consider this issue (i.e. the Board meeting date)?
  - If this Board meeting date was not shortly after you became aware of the situation in April 2009, why there was a delay?
  - What were the Board's discussions and conclusions on the issue and

- In the Boards discussions, was it aware of the time, between your brother selling his house in 2007 to the Developer and it being reported as a potential conflict of interest in 2009?



**Tomas Wilkinson**  
Director

**Northern Ireland Audit Office**

106 University Street  
Belfast  
BT7 1EU  
Direct Line : (028) 9025 1073  
Fax : (028) 9025 1051  
E-mail: [tomas.wilkinson@niauditoffice.gov.uk](mailto:tomas.wilkinson@niauditoffice.gov.uk)  
Web address: [www.niauditoffice.gov.uk](http://www.niauditoffice.gov.uk)

**Mr Will Haire**  
Accounting Officer  
Department for Social Development  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
BELFAST  
BT7 2JB

11 July 2013

Dear Will,

**Whistleblower – Trinity Housing Association purchase of Crossgar site**

We have recently received an allegation from a whistleblower that at the time in 2007 when Trinity Housing Association bought a site in Crossgar from a developer for £885,000, the same developer was also in the process of buying another site in Beverley Heights Newtownards for £700,000 from an owner who was closely related to the Chief Executive of Trinity.

The Crossgar site was supported by Advance Land Purchase grant from the Department. The allegation from the whistleblower appears to show a conflict of interest and I would be interested to know if the Department were ever made aware of this link and if has been investigated. At the very least we would have expected that, if the suggested link above is correct, then the Chief Executive should have disclosed the conflict of interest to his Board (and possibly the Department/NIHE) at the time the purchase was made.

I would be very grateful if you could arrange for this allegation to be examined and if you could come back to me in due course

Yours sincerely

**TOMAS WILKINSON**  
Director