

To: Michaela Boyle

Chairperson

Public Accounts Committee

Dear Michaela

Thank you for the opportunity to respond to this audit.

As you have asked in your email I will point out where I believe information in the first audit is wrong or misleading.

To provide you with some background, I joined the Housing Executive in 1973 and spent most of the time until retirement in 2011 in the Land and Property Department or on secondment dealing with Land and Property issues. I was Head of Land and Property from 2001 and a member of the Irish Auctioneers and Valuers Institute. At its peak the Department had about 120 staff but averaged most of the time around 70 staff. The Department processed upwards of £2 billion pounds of cash transactions arising from the sale of 120,000 houses, 60,000 compensation payments to property owners in redevelopment areas, the purchase of 600 acres of development land, and the purchase of 5000 houses. In relation to land sales there were about 20,000 land sales applications to purchase land resulting in about 7000 land sales. Given the amounts of money going through the Department there was a high level of auditing. Throughout that time and with that level of caseload there was never any suggestion of fraud or improper conduct in any aspect of the Land and Property function until the publication of the first audit in 2012.

When the audit was published in 2012, I believed it to be so inaccurate that in September 2012 I contacted my local MLA who organised meetings with both LGA and the AO. I gave my concerns about the audit and about other issues and believed the follow up audit would address those concerns. The 2016 audit does not take account of any of the the issues I raised.

I had kept I touch with the AO by telephone and towards the end of last year was told that while the report was ready, under the terms of reference of the audit there would be no mention of the issues I had raised. I believed the Housing Executive had accepted the 2012 audit report knowing it contained untrue and misleading information and I made a formal complaint to the HE on the 4<sup>th</sup> of November. I have since had two meetings with the HE but no reply as yet to my complaint.

Nelson Street case.

The first case mentioned in the 2012 report is the Nelson street case. The Committee will be aware that in 2010 there was a breakdown in relationships between some Directors, the Chairman and the Minister. The Nelson Street case and Maintenance issues had brought this to a head. The Nelson ,Street case was a very serious issue, it was a case that involved a matter which had arisen in the planning department within the Housing Executive. I wish to emphasise that the Nelson Street case had nothing whatever to do with the Land and Property department, there was no land sale or purchase involved. There was no file on the case in the department. What is surprising then is that the then Director of Corporate Services, who had within his Division a wing of the Planning function, organised a panel to look into fraudulent activity in land sales with no such investigation of the planning function. I have very limited knowledge of the Nelson Street case so will make no comment

about the audit report concerning it. What I will say is that it is very misleading to include the Nelson street case in a report which relates to Land and Property as it gives an untrue indication that it is a case which was handled by that Department. The audit report sets out various recommendations to strengthen the governance of land sales, I am unaware that any recommendations were made about the governance of planning issues.

Sale to a community group.

The report says that the sale of land to a community group was raised by a whistleblower and the case was forwarded to the psni. The implication is that the whistleblowing was about fraud in the Land and Property office. That is not true, the whistleblowing was about suspected fraud in the community group.

This is a particularly misleading statement to make in the 2012 report and reference to it has been dropped from the 2016 report.

Review of Governance

Board and CXBC approvals

The report states that not all sales were being approved by the CXBC or Board and that 6 out of 10 cases examined had not been approved. The implication is that 60% of all land sales were not being approved. The 6 cases referred to were all cases of land being transferred to Housing Associations to enable the Associations to get start dates within the financial year. The Board had already approved the Transfer Programme which included these schemes and the policy is to transfer land to Housing Associations for free. The process of obtaining Board approvals was significantly delaying the transfer programme and the Director of Development confirmed that since the Board had already approved the transfers, and no money was changing hands, then it was not necessary to repeat the process by having individual approvals.

Again I feel that reference to there not being Board approvals is untrue and misleading.

The report states that Internal Audit had given repeated limited ratings to land and property systems. I would like to deal with this in some depth.

The HE Accounts were qualified by LGA in 2002 in relation to the HE withholding the value of its land assets from the Annual Accounts. A team was set up to implement a plan to identify the land which had been unaccounted for and to get the value included in the Accounts and get the qualification lifted. I was seconded to identify this land and have it valued. About 900 acres were identified. Internal audit were charged with ensuring that the surplus land included in this 900 acres was sold in accordance with DFP rules for the disposal of surplus assets in the public sector. Internal audit issued a report saying that the acreage of land identified equalled the land needed to build houses for the entire waiting list for those in urgent housing need and that no more land should be bought by Housing Associations. This was obviously a ludicrous report because, for one thing, the bulk of the land was in the East Antrim area. When this was pointed out the audit response was that "when the houses are built the people will come" In other words people who had applied for a house in say Enniskillen would come to Carrickfergus! There developed a credibility problem.

Internal audit then issued another report which stated that the process for declaring land surplus was improper because no economic appraisals were being carried out. The view of the VLA was sought on this. Their view was that the process being used, and which had already been agreed by LGA, was correct. Internal audit would not accept this. A meeting was held with the Chief Executive

of the VLA and two senior valuers, the CX of the Housing Executive, the Director of Housing, the Asst Director of Housing, and myself. The VLA reaffirmed that the system being used was correct and gave the HE a letter to confirm this. It is noteworthy that the LGA were fully supportive of the systems for selling land set out in the manual which did not include economic appraisals and ultimately lifted the qualification of the Accounts.

It is untrue to say that internal audit reports were ignored, they were not.

The audit quotes the Housing Order 1981 and states that the Executive has a statutory duty to "obtain best consideration" (best price) and that the manual says "this means selling by way of public tender". The quote from the 1981 Order is only part of the legislation, the next sentence is that "for the purposes of demonstrating best consideration an assessment by a qualified valuer is acceptable. This is the means by which almost all the 7000 or so HE land sales have been sold over the past 40 years.

The manual does not say that land should be sold only by public tender as the report states.

#### Disposals Review Project.

I come back to the point that while a review to detect fraud was set up to look at land sales no corresponding review was set up to review planning. All the more surprising since Nelson street, the case that had initiated the land review had in fact been a planning issue.

The review stated that "there was favouritism in most off market sales". By definition there is favouritism in all off market sales. The HE has sold about 97% of its sales off market and has had this policy since it was established 40 years ago. I would like to expand further on this.

The HE owns just under 2,000 acres of recreational open space within its estates. At the establishment of the Housing Executive it was agreed with its sponsoring department, the then Dept of Environmentt, that it would treat requests to purchase small pieces of land from adjacent owners "on the basis of being a good neighbour". This became integrated within the HE's business plan objectives of social inclusiveness and estate development. About half of requests to purchase land were from people who wanted to extend their dwellings or gardens and the remainder of sales were a mix of land being sold for social uses, the extension of adjacent businesses, open space to be managed by Councils, other government agencies etc. There is a comprehensive policy and procedure manual in place covering these land sales approved both internally and by DFP.

All these sales are assessed for value by the VLA and the assessed amount charged, with some approved exceptions, eg NIE sub stations which serve HE dwellings. In cases where the land value is less than the cost of the legal and valuation fees a minimum premium is set by the VLA, it was £500.

It is completely misleading for the report to represent a policy that has been fully approved and operated for 40 years as favouritism. A strange remark appears in the audit where it states that the HE cannot demonstrate what "advantage the HE obtained" when land was sold. In none or very few of the 7000 land sales was there an advantage to the HE. That was not the purpose of the approved sales policy. There is a contradiction in the report when it implies that the HE should obtain an advantage (presumably a financial advantage) in land sales yet goes on to say that there have been no problems since 2010 when the same policy of selling land to adjacent applicants has still been

applied. There is still not full recoupment of costs including staff costs which I had estimated at £2500 per case.

The report says that economic appraisals were carried out only in vested areas . That is not true, the report is mixing up the economic appraisals for the redevelopment process with selling of land under the rules for land sales approved in the manual. I would like to say something about economic appraisals. The fact that the HE did not carry out appraisals for land sales within the approved policy is criticised in both the 2012 and 2016 reports.

I mentioned earlier that the Accounts were qualified in 2002 and an implementation group chaired by the then Director of Finance was set up to identify land and set up appropriate systems for the future. The issue of economic appraisals arose because of the green book content and was addressed by the group. These small land sales were part of the 2000 acres or so of open space within the estates. The question was had this open space any value for inclusion in the Accounts, ie was it an asset. from Finance Division checked this with the appropriate accountancy professional body and was told that the value of open space in estates, which by itself could be considered to have a negative value, is considered to be included in the value of the houses in the estate. This was checked with housing authorities in GB who confirmed this. In relation to how we were to treat any receipts arising out of sales of this land, Land and Property were told it was “windfall income” and the question of economic appraisals did not arise.

The 2012 report states that “based on independent valuations there are indications that financial losses in some of the cases could be significant,” yet in the 2016 report no quantifiable loss is given. That is hard to understand, that a report which had stated there was significant financial loss is not backed up in the later report.

As I mentioned earlier I was seconded in 2003 to identify and value the 900 acres of development land which had not been declared in the Accounts. The value of this land increased from around £150 million in 2003 to about £650 million in 2008. Under DFP rules for the sale of surplus land the surplus sites should have been sold (sales completed) within 3 years from they were identified as surplus. This land was ready for sale by the land office and estate agents appointed and reserve prices agreed with the VLA. Land and Property were told to stop all sales because in the words of a Finance Division officer the value of the land portfolio was “increasing by £3 million a week and the best investment we have.” When the property crash came in 2008 the value of the land fell dramatically. If the DFP rules had been followed the public purse would have gained perhaps £100 million. One of my concerns is that the reason for this audit being concentrated solely on Land and Property is to divert attention from others who made the decision not to sell the land and ignore the DFP rules.

To make it worse the best quality and most valuable of the surplus sites were sold after the crash at the bottom of the market for a fraction of their former value, some to investment companies, against the advice of the VLA.

The audit criticises the HE for not using Clawback as part of the sales process. This was considered but the advice was that while Clawback can be useful in sales where there is the potential for a change in planning use from say industrial to retail, it was not appropriate in HE sites that are zoned for housing and could have a negative impact on getting best price. In fact the HE did use clawback in the Hope Street site where the developer wanted to change the site use. There was regular liaison between the HE and the VLA and there was never any indication from the VLA that clawback should be used in HE land sales for housing.

The audit criticises the HE for accepting payment for sites in phased payments and gives Annadale as an example. What the audit does not say is that this site had been sold previously, the developer started work and realised he could not make it work financially and backed out of the purchase losing his substantial deposit to the HE. When the HE came to resell the site it was stigmatised as a failed development and very much more difficult to sell.

#### Hardcastle Street

The 2016 is a long and complex report and I have not been able to fully absorb it, rather I have concentrated for the purposes of getting a response to you on the 2012 audit report. I have read in detail the comments about Hardcastle Street and there is a lot that concerns me about it.

The audit indicates that the Ombudsmans findings support the view that there was wrong doing in the Hardcastle street site. That is not the case. The Ombudsman makes it clear he is not giving any view on whether the HE got the right price. An officer in the local office had given a letter to the complainant saying that the HE would put the site on the open market. That was a mistake and the Ombudsman found accordingly. There was no suggestion in the Ombudsmans report that there had been any improper motive in the HE selling the land directly to the developer.

The truth is that the site could never have been sold to anyone other than the developer. The HE had vested this land as part of a DSD (Belfast Development Office ) initiative set up to increase the private housing supply in the inner city. The land was specifically vested for transfer to the owners of a derelict warehouse building which was being converted into apartments. This was the first conversion project and the market for inner city apartment conversions was untested. The site itself was a portion of adopted derelict roadway which gave public access to the building and the HE extinguished the public rights of way. The HE could never have been successful in selling a site it had vested for transfer, extinguished the rights of way into the building and then sell it to a third party who would then have key land value to the building. In any event since the land had been vested within the previous 25 years it would have to be offered back to the original owner.

I mentioned earlier the implementation group set up in 2003 chaired by the former Director of Finance to get the qualification of the Accounts lifted. That group had prioritised the sale of surplus sites that were known about in 2003 in order to comply with DFP rules on the sale of surplus assets. This was one such site and the planning approval for 4 houses was due to expire. There was planning department advice that the approval was unlikely to be renewed. The site was sold to the developer as originally intended and the public purse got the benefit of a capital receipt, otherwise it would have got nothing if the planning approval had been allowed to lapse.

The Hardcastle street site was sold as part of the outworkings of the tasks undertaken to get the qualification lifted and not as presented in the report.

It is very concerning that key documents are not acknowledged in the audit eg a VLA report which said that the sale to the developer was "the correct business decision", there was a valuation from an independent estate agent that the value of the site on the open market was only £76,000. The audit says that the CXBC did not approve the sale to the developer. That is not true. The CXBC did approve the sale.

The 2016 audit says that the psni said that the reason prosecution could not take place is because there was no written enabling policy. It indicates that was the only reason that a prosecution could not proceed. I find that frightening because it indicates that at least some of the facts I have set out here were not made known to the psni and I believe this should be further investigated. For example

the audit states that signatures were cellotaped and therefore false, indicating that this took place in Land and Property. This did not happen in Land and Property, I understand it took place in another department.

If there is one thing I would respectfully ask the Committee to do that is to get to the bottom of what happened in the Hardcastle street case because it typifies much of the untrue and misleading nature of some of the statements that have been made.

I find it hard to understand how a report entitled "The Governance of Land and Property in the Housing Executive" did not include the issues I had raised over 3 years ago, in particular the non compliance with DFP rules regarding the time limits for the sale of surplus assets with such a significant loss to the public purse.

The 2012 audit was written I believe to cause a sensation in the press which it certainly did. I believe it is untrue and misleading and that the public were misled.

Finally I would like to say that I am making these comments to the Committee purely on my own behalf and on behalf of the Land and Property staff, many of who like myself have worked there most of their working lives. Land and Property was not involved in fraud or misconduct in the way that has been presented, and I very much hope that the Committee can acknowledge that in their final report.

Yours faithfully

David Hutchinson.