



CONSTRUCTION DEFECTS ALLIANCE

Apartment Defects Campaign Update, 7 May 2020 – PLEASE SHARE

Campaign Continuing

Apologies for the two-month pause in communicating with everybody but things have been somewhat in ‘suspended animation’ because of the COVID-19 Lockdown.

Despite that, the campaign has been ongoing in so far as the Construction Defects Alliance and the Apartment Owners’ Network have been working away jointly in the background to prepare detailed policy proposals for people involved in negotiations over a Programme for Government and – as we now know – negotiations are going to get underway in earnest from Thursday, 7 May and are likely to last for a number of weeks.

In early April, we emailed our proposals to all Oireachtas members and we have also just circulated detailed costings to Party Leaders, Deputy Leaders and Housing Spokespersons as well as senior officials in the Department of Housing. We’re now in the process of seeking meetings with key individuals to seek their support for our proposals and expect that some of these meetings (on Zoom of course) will take place over the next few days.

We’ll keep you posted on our progress!

And anyone who needs reminding of why our campaign is so important should just read this article in *March’s Engineers Journal* by fire expert, Éamon O’Boyle on the extent of the problem of fire defects and why it’s important that THIS Government tackles them.

Tackling Legacy Defects and Minimising Future Problems

The joint proposals between the Construction Defects Alliance and the Apartment Owners’ Network (now up on the website at <https://bit.ly/2WuAp5K>) set out a detailed menu of policies for tackling legacy defects from the Celtic Tiger era as well as minimising the occurrence of defects into the future.

In terms of tackling legacy issues, we're proposing:

- Establishment of a remediation scheme to be administered by a Latent Defects Remediation Board (LDRB) with the support of a State body such as the Housing Agency.
- Creation of an information, advice and mediation service (to mediate between OMCs/owners and builders/developers) for owners and OMCs.
- Undertaking of a systematic assessment by OMCs – in conjunction with the LDRB – of pre-2014 multi-unit developments to determine the extent of the defects problem and to put in place a remediation process to rectify the defects concerned.
- Remediation process to be funded by the State and the construction industry as operates in relation to pyrite and mica remediation and as proposed by the *Safe As Houses?* report.
- An alternative funding mechanism for such remediation works – which would not be our preferred option as it would depart from the precedent set by the pyrite and mica schemes and would unfairly impose some of the remediation costs on the entirely innocent apartment owners – would involve paying for the remediation works through interest-free 20-year loans to OMCs. Such loans would be repaid by their members through levies, against which they can claim a refundable tax credit or get an equivalent financial benefit if they are not in the tax net or on the lower tax rate.

In relation to protecting homeowners into the future the proposals set out include:

- Adequate funding and powers for the National Building Control Office and local authorities so that all new multi-unit developments can be independently inspected for compliance with the Building Regulations during the construction process.
- Investment in local authority building control to improve enforcement, including greater use of the provisions of the Building Control Acts providing for personal liability for serious breaches of the Building Regulations of managers, directors of the companies or partners in the partnerships responsible for the breaches concerned.
- Amendment to the Statute of Limitations to introduce an additional limitation period of two years from discovery of a defect for bringing of proceedings.
- Law reform, including enforceable legal duties from developers/builders to first and subsequent purchasers, as well as minimum mandatory terms to ensure a fair balance between the rights of the developer/builder and those of the purchaser.
- Introduction of a system of licensing and bonding for developers to be operated by a State body such as the Housing Agency OR Introduction of mandatory Latent Defects Insurance – to be paid for by builder/developers.
- Amending Section 35 of the 2000 Planning Act so that planning authorities can take into account failures to comply with building control requirements in deciding whether to grant planning permission to applicants.
- A bar on the awarding of publicly-funded construction projects to developers, builders and/or construction professionals found to be in serious breach of building standards or fire safety regulations.

Detailed Costings

As we mentioned earlier in this Update, once the detailed proposals were completed and circulated, the Construction Defects Alliance and the Apartment Owners Network then set about working up what the additional cost to the State would be of the tax reliefs we set out in those proposals (the detail of these costings is posted on our website at <https://bit.ly/2zhH9u>).

It's important to emphasise that our preferred solution is to see the establishment of a redress scheme – similar to that put in place for those homeowners affected by mica and pyrite.

However, recognising the feedback we have gotten for some time from some of the political parties, we decided to set out an alternative remediation scheme based on 20-year interest-free loans to Owners Management Companies (OMCs) combined with tax credits – or similar financial benefits – for owners on the levies they pay to their OMCs.

At present, landlords – both incorporated and unincorporated – can write off OMC levies and service charges against their tax, leaving owner-occupiers 'high and dry' in terms of getting any assistance around defraying their remediation levies.

So, if owner-occupiers were entitled to tax credits at 40% – or some similar financial benefit – on their remediation levies, our estimate is that over a 20-year period, the **ADDITIONAL** cost to the State of such a scheme – in terms of tax foregone – would be **€11.6 million per year**.

As you know, currently OMCs and apartment owners are left saddled with the sole responsibility for rectifying what is a very important public safety issue with very little support and flexibility to help them improve the situation and keep people safe.

The Construction Defects Alliance and the Apartment Owners' Network are firmly of the view that an annual cost of €11.6 million is a very reasonable price for ensuring that the people living in those apartments are living in safe and secure accommodation and that apartment owners are not unfairly saddled with the entire cost of remediating defects which they did not cause in the first place.

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