



CONSTRUCTION DEFECTS
ALLIANCE

Budget 2023

Submission

to

**Department of Finance
Department of Public Expenditure and Reform
Department of Housing, Planning and Local Government
and Oireachtas members**

June 2022

Contents

Construction Defects Alliance	Page 3
Submission Context	Page 4
Proposals	Page 10
Costings	Page 13
Conclusion	Page 15

1. Construction Defects Alliance

The Construction Defects Alliance is an informal grouping – which has the support of the Apartment Owners’ Network (AON) – currently involving hundreds of apartment owners and OMCs from almost 150 different locations around the country which are affected by construction defects. The Alliance also has active involvement from some of the professionals who are working with the owners and OMCs concerned.

The Alliance has its origins in the Beacon South Quarter (BSQ) Lobby Group which has been campaigning for the last number of years for action for homeowners affected by defects. Through that Lobby Group’s campaigning work other individual owners and OMCs approached it and got involved in the campaign. Ultimately, as the numbers began to grow, the Construction Defects Alliance was set up in autumn 2019.

The Alliance has one very simple aim – the implementation of the Joint Oireachtas Housing Committee’s *Safe As Houses?* report, which was published in January 2018.

The *Safe as Houses?* report’s key recommendations are as follows:

- i. *Government should establish a redress scheme to assist homeowners with latent defects*
- ii. *The mission statement of the redress scheme should be: “Ordinary owners who purchased in good faith should not be liable for the costs of remediation caused by the incompetence, negligence or deliberate non-compliance of others”*
- iii. *The redress scheme should provide an information and advice service for those affected by non-compliance and regulatory failure*
- iv. *The redress scheme should examine a number of possible funding mechanisms for assisting owners affected by pre-2014 non-compliance including:*
 - *An industry levy funded levy matched by Government funding*
 - *Allowing owners to write off the costs of remedial works against their tax liabilities*
 - *An interest free loan scheme to assist homeowners fund the cost of remedial works*
- v. *The redress scheme should be accompanied by a programme of fire risk assessments based on a methodology designed to assess boom time developments deemed potentially at risk of containing latent defects.*

2. Submission Context

2.1 Working Group on Defective Homes

Further to the Programme for Government (PFG) commitment that the Government would examine *“the issue of defective housing...having regard to the recommendations of the Joint Oireachtas Committee on Housing report, ‘Safe as Houses?’”*, the Minister for Housing, Local Government and Heritage, Darragh O’Brien TD, established an independent Working Group on Defective Homes.

The Working Group, which had its first meeting at the end of March 2021, is now expected to issue its report to the Minister in late June or early July this year and then it will be up to the Minister to publish the report – sometime in early July hopefully.

However, the timing of the completion and publication of this report is coming late in the annual Budget cycle – hence the reason why the Alliance is publishing its submission in June in order to ensure that there is a full discussion in the policy making system on the urgent steps that will be required to be taken in Budget 2023 and its attendant legislation.

2.2 Scale, Nature and Impact of Defects Problem

While the Working Group’s report is in the process of being finalised, we understand from our discussions with various policy makers over recent weeks that a number of key issues have become clear from its process of deliberations – which are largely in tune with the evidence that has been available for some time to the Construction Defects Alliance:

- Potentially, up to 100,000 Celtic Tiger era apartments have been affected by fire safety issues, damp due to water ingress and other defects;
- Average remediation costs are over €25,000 per unit;
- Only a small proportion of the affected apartments have completed the remediation of their defects – around 10% – meaning that hundreds of thousands of people are living in apartments that are unsafe and unhealthy.

Not surprisingly, living in such risky conditions causes huge stress to the people involved.

The Grenfell Tower tragedy and the continuing fallout from it has had a profound effect on people living in properties that are not secure from a fire perspective. And it’s a well-founded worry – in Beacon South Quarter alone there have been around a dozen fires in recent years with some apartments being absolutely gutted. We also know that people

died as a result of a fire in Verdemon in Blanchardstown, a terrace of houses in Newbridge, Co Kildare was destroyed by fire in the not too distant past and considerable damage was done to the Metro Hotel in Ballymun when people were resident in it. We know of cases where people sleep with fire extinguishers by their bedhead as a precaution should there be a fire.

On the financial side, the need for owners' management companies (OMCs) to get money upfront places huge strains on owners who have to find the resources to pay the levies in addition to their mortgages, service charges, as well as rapidly rising heating and other costs. Many owner-occupiers and small landlords are being largely forced to borrow – at interest rates of 9% or 10% which will shortly rise – to pay their levies. However, other owners are really struggling to pay their levies and as a result are facing legal proceedings by their OMCs over non-payment which are not pleasant for all concerned.

And remember that all of this stress and strain arises through no fault of any of the people involved. The defects were caused by shoddy building and poor oversight – yet the innocent apartment owners are the ones left to mop up after other people's failings.

2.3 Urgent Need for Action on Retrospection

As was mentioned above, the Alliance understands that the Working Group has found that up to 100,000 apartments are affected by fire safety and other defects – meaning that hundreds of thousands of people are living in unsafe and unhealthy homes. This reality places a duty and responsibility on Government to act speedily to implement the Working Group's recommendations including in Budget 2023 as well as the subsequent Finance and Social Welfare Bills, if required.

While the scoping out of the details of a full remediation support scheme – including putting in place legislation and the infrastructure needed to implement and run the scheme – will not be done overnight, there is a need for action in Budget 2023 on the issue of retrospective financial support for apartment owners who have paid or are paying levies for the remediation of their properties.

We understand from our recent discussions with policy makers that the Working Group is conscious of the need for such urgent action by Government on retrospection particularly where remediation projects may be at the investigative stage or just underway and there is a risk that the remediation process may be halted to wait and see what type of remediation support scheme is put in place and to make sure that their development qualifies.

On the basis of several communications from OMC directors and managing agents, the Construction Defects Alliance is concerned that any time lag on tackling retrospection

may give rise to a very real but unnecessary risk to health and safety arising from the deferral of important works. The evidence available to the Alliance is that up to **35,000** defective apartments could be potentially affected by such risks

The Alliance's concerns are shared by experts in the field. In early 2020, recognised fire expert, Eamon O'Boyle, in an article in the *Engineer's Journal* (bit.ly/2Q9mCix) in which Mr O'Boyle stated: "*Fire safety of apartments is one of the many 'legacy issues' faced by Government and it cannot be long-fingered until there is a tragedy.*"

Another hazard that might arise from there being too much of a time lag on putting retrospective financial support for remediation is that many owners who are currently paying levies will simply stop paying.

In Beacon South Quarter for example, 60% of the fire safety remediation works have been completed. However, because owners are by and large paying through instalments, for the remaining 40% of apartments to be remediated, the owners of the 60% which have been remediated need to continue to pay their levies. There is a real concern that a failure to speedily provide for retrospection for owners who have paid or are paying levies – especially those in the buildings where fire safety works have been completed – will lead to a number of owners deciding to discontinue their levy payments.

It's important to bear in mind that even if the vast majority continue to pay, a small number of non-payers could mean that the budget for undertaking works in a particular block may not be reached and fire safety remediation therefore can't take place. And it's critical to understand that a multi-unit building is only fire-safe when all fire safety works are done. Even if 90% of the works are done, 100% of those living there are still vulnerable to fire and smoke.

2.4 Fairness and Equity

There are also underlying principles of fairness and equity at play between different categories of apartment owners. Landlords – except social landlords who are neither local authorities or approved housing bodies – have been able to get financial support for their remediation costs through tax relief.

The ability for commercial landlords to get such relief was confirmed by the Minister for Finance, Paschal Donohoe TD, in his answer to a Parliamentary Question (PQ) from Deputy Ged Nash on 28 September 2021 when the Minister said:

Section 97 Taxes Consolidation Act 1997 (TCA) sets out the deductions allowable in computing rental income chargeable to income tax or corporation tax under Case V of Schedule D. Income chargeable under Case V is computed on the gross

amount of rent receivable less allowable expenses incurred in earning that rent, as specified in section 97(2). These expenses include, inter alia, the cost of maintenance, repairs, insurance, and management of the premises borne by the person chargeable and which constitute an expense of the agreement under which the rent/receipts were received, but excluding any capital expenditure.

Revenue's Tax and Duty manual 04-08-01 provides detailed guidance on the tax treatment of rental income. Service charges and levies that are imposed by management companies are deductible against the landlord's rental profits.

It's understood that such landlords comprise in the region of 60% of apartment owners in Ireland while the other 40% – owner-occupiers and social landlords – have not been able to avail of such a facility.

It's worth noting that in November 2021, the Minister for Housing, Local Government and Heritage, Darragh O'Brien TD, set out some important principles in relation to parity and equity for homeowners whose homes are affected by defects when he announced the details of the revised Defective Concrete Block Scheme. At that time the Minister said the following:

- *“This newly enhanced scheme ensures absolute parity of treatment for the north-west coast and the east coast and in some instances goes further.”*
- *“I have consistently said the State has a moral obligation to assist affected homeowners and that is what we are doing through this enhanced scheme.”*

These principles put forward by the Minister should equally apply to the owners of homes in MUDs affected by fire safety and serious structural defects. However, that is not currently the case.

So, in order to avoid the hazard of deferred/stalled safety-related remediation works and to ensure fairness and equity for all apartment and duplex owners affected by defects, Budget 2023 should begin the process of providing for retrospective financial assistance to owner-occupiers and social landlords – while landlords should be facilitated to claim the balance of their remediation costs that were not covered by tax relief.

2.5 Impact on Social Housing Tenants

Approved Housing Bodies (AHBs) have already spent millions of Euros in remedying defects within apartment complexes with tens of millions in further expenditure anticipated. As the safety of AHB residents comes first, AHBs' priority has been to remedy these defects by any means possible. However, to date, they have been forced to pay out for these defects using reserves that were intended for other purposes,

including planned maintenance, community initiatives and other items essential to the creation and maintenance of successful, vibrant communities.

In reality, social housing tenants – many of whom already experience disadvantage in their lives – are being further disadvantaged by the long-fingering of much-needed maintenance on their homes and communities and the postponement of important community initiatives.

Returning to the principles of fairness and equity, it is deeply unacceptable that social housing tenants are being made to lose out on maintenance of their homes due to the fact that AHBs are being forced to pay for defects remediation out of their own resources.

2.6 Holding the Construction Industry to Account

The final issue the Construction Defects Alliance wishes to address in terms of the context for the proposals in this submission is the need for the construction industry to make a contribution towards the costs of remediating fire safety and other defects.

As pointed out earlier in the first section of this submission, the *Safe as Houses?* report recommends that the remediation scheme for MUD defects should be part-funded by an industry levy and the State. The Alliance agrees with this proposition and we go further in saying that it would be contrary to any concept of natural justice and simply unconscionable if owners were asked to contribute to remediation costs while the construction sector – which created and oversaw the catastrophic systems failure that the defects issue represents – continues to get off scot-free.

On 30 November 2021, Minister Darragh O’Brien’s statement announcing details of the revised Defective Concrete Block Scheme contains the following comments on a construction industry levy in the *Notes to Editors*: ‘the potential for an industry levy to financially contribute to the Scheme will be investigated’ (<https://www.gov.ie/en/press-release/e365e-minister-obrien-announces-enhancements-to-the-defective-concrete-block-scheme/>).

Likewise, a document issued by the Department of Housing, Local Government and Heritage, *Your Questions Answered: Defective Concrete Block Scheme*, also published on 30 November 2021 went further on the matter of an industry levy when it stated on Page 11: ‘A levy on the construction industry will be put in place and introduced in Finance Bill 2022’.

In response to a Parliamentary Question from Ged Nash TD on the matter on 17 May last, the Minister for Finance, Paschal Donohoe said the following on the issue of a construction industry levy:

As the Deputy will be aware, it is the Government's firm intention to find appropriate solutions for those ordinary home-owners who have been affected by the defective concrete blocks issue. The Programme for Government reflects this commitment.

That commitment is further reflected in a Government decision taken on 30 November 2021 regarding the Defective Concrete Block Grant Scheme, which agreed a number of actions to help address the defective blocks issue. One of those proposed actions was that a levy on the construction sector was to be put in place to raise in the region of €80m a year, and it is that levy to which this question refers.

My officials, with the assistance of colleagues in other Departments and agencies, as well as from Revenue, have been working on identifying and evaluating a range of options in regards to such a levy. Once this work is further advanced it may be necessary to seek the views of relevant stakeholders, who's input would be required before I would be in a position to make any final decision on the proposed levy.

The Construction Defects Alliance believes that on the basis of the *Safe as Houses?* report's recommendations that this industry levy process should be extended to deal with apartment and duplex defects too.

In this context, it's worth noting that the UK Government has explicitly asked the UK construction sector to contribute financially to the costs of remediating fire safety defects in apartment buildings there. So far, 38 of the largest builder/developer companies have agreed to remediate any defects in buildings that they constructed and, in addition, to contribute to a £5 billion Building Safety Fund to pay for the remediation of buildings where the builder/developers no longer exist.

3. Proposals – Supporting Vital Remediation Works in 2023

As stated earlier, the proposals contained in this section of the submission are designed to address the potential moral hazard of safety-related remediation works being stalled or deferred and to ensure fairness and equity for all apartment and duplex owners.

They are specifically designed to ensure that – through retrospective financial supports through the tax system – owners continue to pay their levies so that remediation works that are underway or in the pipeline can proceed.

In addition, such retrospective financial supports through the tax system will ensure that all apartment owners who have already paid remediation levies are treated fairly and equally.

3.1 Refundable Tax Credits for Owner-Occupiers

The first proposal is that apartment owner-occupiers (who account for up to 25% of apartment owners) who have paid levies or are paying levies are not left to take full financial responsibility for the costs of rectifying defects – unlike commercial landlords – the Alliance is proposing that a refundable tax credit – covering 100% of the remediation costs levied by their OMC – be introduced for such apartment owner-occupiers on their levy payments. Due to the refundable nature of this mechanism, owner-occupiers who are outside of the tax net would receive a cash payment to the value of the credit.

This measure, which we are proposing – should come into effect through the 2022 Finance Bill on 1 January 2023 – would provide certainty to owner-occupiers that they will be able to reclaim the full cost of their remediation costs and will provide a real concrete incentive to them to continue paying their levies so that remediation works that are in hand can continue to completion, thus removing the ‘moral hazard’ that we understand is alluded to by the Working Group on Defective Homes.

It would also provide parity and equity with commercial landlords who can currently write off their remediation costs against their rental income or claim them back over eight years through Capital Allowances.

How it would work from a practical point of view?

From 1 January in any given year, owner-occupiers can make their annual tax returns and in that they could include documentary proof from their OMC of the remediation costs which they have paid. Once received and processed, Revenue will then issue the owner-occupier with a refundable tax credit.

Given that owner-occupiers have not been able to claim for any remediation costs to date, we are proposing that the standard four-year 'look back' provision be dispensed with in this particular instance. Given that we know that defective apartments and duplexes arose from non-adherence to the Building Regulations which came into effect in 1991, the 'look back' period should be extended back to 1991.

To claim tax credits for such historic payments, again owner-occupiers will have to provide confirmation from their OMC of that they have paid historically towards defects remediation.

3.2 Grants for Approved Housing Bodies

In addition to owner-occupiers, approved housing bodies (AHBs) have received no form of financial assistance on their remediation levies. The Alliance understands that these bodies own 4% of the country's apartment stock but are not taxable so they are not in a position to avail of a facility like a refundable tax credit.

Therefore, we are proposing that AHBs should be grant aided by Government in order to reimburse them for the remediation levies that they have paid in 2022 or in previous years back as far as 1991.

From a process point of view, AHBs will have to provide proof of payments towards remediation costs from OMCs in order to qualify for such grants. Like with the owner-occupiers, the 'look back' period should be extended back to 1991 when the Building Regulations came into effect.

3.3 Extended Tax Relief for Landlords

Landlords – apart from social landlords – are the largest cohort of owners in Multi-Unit Developments in Ireland accounting for around 60% of the units. While landlords have been able to claim tax relief for their defects levies the relief operates at their marginal rate of tax so the maximum any landlord has been able to claim back has been 40% of their remediation costs.

The principles of equity and fairness apply to such owners too – they are in no way responsible for the defects that affect their apartments. In addition, in relation to 'moral hazard', it is important that landlords are supported in this way so that they continue to pay their remediation levies thus enabling OMCs to make homes safe for all residents.

From an operational point of view, landlords will have to submit confirmation from their OMC of how much they have paid in any particular year towards the remediation of defects. If a landlord has already made a claim for tax relief on these costs then they will submit a claim to be repaid the balance by Revenue via tax credits. If they have not made a claim for any particular year, then they will be seeking a tax credit for 100% of their remediation costs that year.

Like with the other proposals above, the 'look back' period for landlords seeking to claim back the full value of their remediation costs should go back as far as 1991 when the new Building Regulations came into effect and after which defects were supposed to be eliminated from our building stock.

3.4 Construction Industry Levy

As we set out earlier in this submission, given that Government is already considering putting in place a levy on block manufacturers to raise €80 million per annum towards the revised Defective Concrete Block Scheme, then we are proposing that the levy be extended to the wider industry given that the scale of the issue reflects a systems failure by that industry and the State – in terms of its failure to effectively oversee the implementation of its own Building Regulations.

Specifically, we are proposing that a levy should be introduced by the Government in the 2022 Finance Bill on building contractors, developers, construction professionals, sub-contractors, quarries and product manufacturers to reflect their responsibility for defective MUDs and the homes blighted by mica.

While the detail of how such a levy might work would be a matter for Government, it's worth pointing out that a 1% levy on the output of the construction sector in 2022 would recoup a €320 million contribution to the costs of remediating defects (this is based on AECOM Ireland Annual Review 2022 published in January 2022 <https://communications.aecom.com/ireland-annual-review-2022>).

There is also considerable precedent for the imposition of such levies where the State has had to intervene to make good failures by the private sector. For example, the current Insurance Levy was introduced to help the State recoup the costs of bailing out Quinn Insurance and the Bank Levy – which has netted €1.2 billion up to the end of 2021 – was put in place to help the State recover some of the costs of the outlay on recapitalising the bank after the crash of the financial sector.

4. Costings

4.1 Cost of Retrospection for Completed Works

The Construction Defects Alliance understands that the Working Group has estimated the costs paid by owner-occupiers for completed remediation works range between €26.5 million to €53 million (the costs range on the basis of the Working Group's estimate of defective apartments which goes from 50,000 to 100,000 units).

In relation to AHBs, the historical costs range from €4 million to €8 million.

That would mean that the total costs to the State of refundable tax credits to owner-occupiers and grants to AHBs for completed works would be **€30.5 million to €61 million**.

4.2 Cost of Retrospection for Ongoing Works

As was mentioned earlier, the Construction Defects Alliance's assessment is that 35,000 apartments and duplexes are currently being remediated. However, the remediation process for these units will go on over a period of time and so our judgement – in terms of the budgetary implications for 2023 – is that the costs of retrospection next year for owner-occupiers and AHBs would mirror the historic costs above.

So that would entail a combined estimated cost in 2023 for refundable tax credits for owner-occupiers and grants for AHBs somewhere between **€30.5 million to €61 million**.

4.3 Costs of Additional Retrospection for Landlords

As we proposed earlier, to ensure parity for all owners, then landlords – aside from social landlords – should be able to claim the balance of their remediation costs to date.

The Alliance understands that the Working Group estimates that such landlords have paid between €60 million to €120 million to date on remediating defective apartments and duplexes.

Assuming that they got tax relief at 40%, then the costs of the additional relief for landlords would be **€36 million to €72 million**.

4.4 Industry Levy

As explained earlier, a 1% on construction industry output would generate €320 million.

Assuming a modest 5% growth in industry output, such a levy would generate **€336 million** in revenue to the State and would pay for complete retrospection in 2023 and also contribute to the wider remediation financial support scheme that, hopefully, will be developed on foot of the Working Group's report.

5. Conclusion

The Construction Defects Alliance wishes to thank the Departments of Finance; Public Expenditure and Reform; Housing, Local Government and Heritage – as well as the Ministers at the Departments – and Oireachtas members for the opportunity to make this submission.

We trust that the views expressed will be given due consideration in the deliberations over Budget 2023 and the measures that flow from that.

We submit that the measures proposed should be raised by all in whatever forum is appropriate, in particular with the Department of Housing, Local Government and Heritage.

We would be glad to expand on our proposals at a meeting or in another appropriate forum.