

Minister Darragh O'Brien
Department of Housing, Planning and Local Government
Custom House
Dublin 1
D01 W6X0

14th March 2023

Dear Minister,

We are writing to you in relation to the 'Tenant in Situ' scheme, which aims to purchase rental homes where a tenant eligible for HAP is at risk of homelessness due to the landlord's decision to sell their property.

Focus Ireland has considerable experience of this measure and are currently working on the purchase of almost 100 homes in partnership with local authorities across the country. On the basis of this experience, we believe we are in a strong position to support you in making the scheme more effective.

Focus Ireland identified the potential of this approach in our ['Restating our Vision 2021-25'](#) organisational strategy where we committed to *"advocate measures which support (rapid re-housing) including ... public purchase of properties from landlords who are selling up, where appropriate."* Our initial attempts to become active in this area proved ineffective when the Government circular of Q1 2022 severely restricted the purchase of homes from the open market. As a result of that circular, during the first part of 2022 local authorities declined to purchase properties even where very vulnerable tenants were facing eviction and homelessness.

We believe this impact was unintentional and was reversed later in the year. Nevertheless, we are aware of considerable unease across local authorities about the consistency of Government policy in this regard. Specifically, there are fears that Government will again limit the purchase of one-off units from the market, so that purchases under the in-situ scheme will later block other purchases essential for other programmes such as Housing First and Tusla CAS to be successful.

As presently operated, the 'in-situ' purchase scheme depends entirely on the willingness of the property owner to enter into a sales agreement at an independently determined valuation. Focus Ireland has advocated for many years that the tenant-in-situ sale should be made more attractive to property owners through tax reliefs. Capital Gains Tax is most often mentioned in this context, but depending upon the time at which the property was first purchased this may not be the most cost-effective tax instrument to apply. We welcome

reports that Government is currently considering such tax measures, but caution that on-going speculation and uncertainty about tax measures (which will only come into play in January 2024) may well in itself alter landlord behaviour in unpredictable ways. The proposed scheme to give tenants the first option on purchasing the property is unlikely to be accessible to tenants on HAP/RS but the forthcoming legislation should also include measures to oblige property owners who are selling to engage actively in the 'in situ' scheme where tenant purchase is not possible.

The suggestions set out below are informed by this need for a longer-term consistent approach where local authorities, AHBs and property owners can plan pro-actively over a number of years.

1. Establish the 'Tenant-in-Situ' scheme as a formal, streamlined and flexible programme.

For the scheme to reach its maximum potential, it needs to move forward from a set of individual cases to become a coherent scheme with streamlined Departmental approval and explicit guidance for Local Authorities and Approved Housing Bodies, while retaining a level of flexibility appropriate to the wide range of individual circumstances which will emerge. The rest of this letter sets out some of the relevant features of such a scheme.

2. Clear communication and a commitment to rapid progress for landlords

For a variety of reasons, there is currently a high degree of frustration and distrust among landlords for the RTB and Government in general. For the scheme to work, property owners need to have good guidance on the scheme, how to access it, the criteria that will be applied and the expected time for completion of sale.

3. Valuations of property must be on a 'vacant possession' basis

In some cases, valuers have been asked to complete a valuation of the property on the existing basis, with the tenant in-situ and existing rent control arrangements. The property owner will be comparing the benefits of selling to the LA/AHB against the benefits of completing the NoT and selling vacant possession. A valuation on the basis of tenant in situ replicates the core problem, is a false 'value-for-money' assessment and is unlikely to result in many sales.

4. The local authority 'scheme of lettings' should be specifically suspended for this scheme so that any tenant eligible for social housing can be supported irrespective of 'time on list';

This step is essential as many local authorities are approaching tenant-in-situ purchases in the same way as they would approach an allocation into a new social housing tenancy. Where the tenant facing eviction is not near the top of the housing list, the purchase is declined.

If this approach continues many tenants will be needlessly pushed into homelessness and the scheme will become discredited with property owners. This approach either comes about as a result of a legalistic interpretation of the scheme of letting or because of a misplaced sense of fairness. It is wrongly perceived that a person near the top of the housing list is in some way disadvantaged by another person being saved from

homelessness. In fact, with ring-fenced funding provided for 'in situ' purchases, the person near the top of the housing list is in no way disadvantaged by support given to the person facing eviction. This mistaken perception of unfairness needs to be directly addressed with local authorities and underpinned by formal suspension of the 'scheme of lettings' when considering such purchases to bring about consistency in local authority practices.

5. Make provision for the scheme to operate across local authority boundaries

The pressures on the private rental market are such that many HAP tenants on the waiting list in a different local authority area than they are renting. This has been facilitated in recent years, to the advantage of many families. However, where the landlord is evicting to sell, local authorities have declined to purchase the property because the tenant is not on their waiting list. The local authority in which the tenant is listed, on the other hand, declines to purchase because the property is outside their area. Clear guidance should be issued to local authorities on cooperating across county boundaries with designated contact points available for the scheme in each local authority.

6. Remove the traumatic requirement of issuing a 'Notice of Termination.'

At present, local authorities require that the tenant must have received a formal Notice of Termination before discussions on 'in situ' purchase can begin. The issuing of such a NoT is traumatic for adults and even more so for children in vulnerable families. The prolonged delays in agreeing and completing purchases mean that the date of eviction on the NoT may well arrive before the transfer can be complete. While, with good will, this may not result in an eviction, it will cause needless stress and anxiety to parents and children. A formal statement by a landlord that they intend to sell the property, and are willing to sell to the local authority with the tenant in place should be sufficient to initiate discussions, without the tenant having to go through the performance of being issued with an eviction notice.

7. Provide specific guidance for 'group' purchases where landlords of multiple apartments are selling up

Around half of the 'in situ' purchases which Focus Housing is currently engaged are in multiple dwelling projects. In these cases, one or more property owners have decided to evict all tenants to sell the property with vacant possession. The new scheme should include specific process to deal with the complexities of these situations where local authorities decide it is in the public interest to purchase the property, for instance where a minority of the tenants are not in receipt of HAP. As noted in 4 above, it should not be necessary for all tenants to have received a NoT before such a purchase can proceed.

8. Ensure that funds are available to undertake necessary repairs/upgrades

Many privately rented properties are below standard of repair/maintenance expected in social housing/AHB stock and require significant investment to bring them up to an appropriate standard. Unless finance is made available for such repair work, many sales will not be able to proceed or else LAs/AHBs will be expected to take a liability into their housing stock.

9. Provide resources to AHBs and LAs reflecting the labour-intensive nature of these acquisitions.

One-off 'in situ' purchases are highly labour intensive for the AHB or local authority, requiring administrative, financial and legal scrutiny. On the other hand, if property owners know that selling with the tenant in situ will be a longer process than evicting the tenant and selling on the open market, the scheme will be undermined, and many households will end up unnecessarily in emergency homeless accommodation.

10. All Local Authorities should have a designated contact for the scheme

At present landlords who are willing to sell to LAs/AHBs are told to contact their local authorities. However, the contact points for local authorities are often obscure and hard to access. There is a high risk that landlords will be put off by the lack of clarity about who to contact or that queries directed to general access points will not be replied to or replied too after too long a time. Our experience in talking to landlords who are willing to sell indicates that this has been a considerable problem and a source of frustration. All LAs should have a clear access point for landlords to make contact about potential sales.

11. Establish a Revolving Acquisition Fund of appropriate scale within the Housing Agency to speed up transaction.

Landlords who are planning to exit the housing market by selling their property will balance a number of factors before deciding whether to sell to local authorities/AHBs or evict-to-sell. One of the decisive factors could well be the time involved. Notice periods are now quite long for established tenancies, but the time frame for approval of purchase and draw down of money can be even longer. The in-situ scheme needs to be designed in such a way that landlords can be reasonably assured that it will be a quicker exit than eviction to sell. A revolving fund of appropriate scale to provide cash flow for CAS and CALF purchases would be one way of underpinning this time assurance.

12. The 'HAP Shared Services' team should be brought into the process of identifying HAP landlords who have issued NoTs for reason of sale

At present the system works primarily through (i) tenants contacting ourselves or Threshold and being directed to speak to their landlord or to the relevant local authority so that the local authority can contact the landlord (ii) landlords hearing about the scheme and contacting the local authority. This is a reactive and inefficient system in which many opportunities to prevent a HAP tenant becoming homeless are lost. At the same time, the HAP unit in Limerick has a list of landlords who have informed them that they are leaving the market and are evicting their tenant to do so. While this list may not cover every case, it should form the basis for a proactive process in which all such landlords are contacted to encourage them to sell to a LA/AHB (and where the relative speed of this exit can be highlighted).

Finally, as demonstrated by our proposals above, Focus Ireland is committed to working with national and local government to maximise the number of households who can retain their home when their landlords sell. However, according to the RTB, in the first 9 months of

2022 4,554 landlords have issued NoTs on the basis that they want to sell, while funding is only available for 1,500 purchases. Equally concerning is the fact that 1,667 other landlords have issued NoTs due to no fault of the tenant but do not intend to sell. Even a streamlined and resourced 'in situ' purchase scheme at current targets would be insufficient to deal with the scale of notified pending evictions, and much greater steps to prevent homelessness and provide emergency shelter will be necessary. We look forward to working with you to identify and deliver further measures to deal with this situation.

With thanks for your attention. We remain at your disposal, and that of your staff, should you require any further detail or explanation of the points set out here.

Your sincerely,

Mike Allen
Director of Advocacy