



An Roinn Oideachais
Department of Education

Ms. Éilis Fallon
Committee Secretariat
Committee of Public Accounts
Leinster House
Kildare St.
Dublin 2

16 June 2021

Ref: S0402 PAC33

Dear Ms Fallon

I refer to your letter of 1 June 2021, arising from meetings of the Committee on Tuesday 18 May and Tuesday 25 May 2021, and to my previous correspondence of 30 April 2021 relating to the transfer of certain properties to the State by religious congregations.

Firstly, while acknowledging that the transfer of these properties has taken a considerable period of time, I would note that significant progress has been made in recent years in bringing this complex process to a conclusion. While at the end of 2018 five of the 60 property transfers under the 2002 Indemnity Agreement had yet to conclude, there are now only two such transfers outstanding – the transfer of Mounthawk Secondary School, Tralee, to the Department of Education, and the transfer of the Sacred Heart Centre, Waterford, to the HSE.

Similarly, at end-2018, nine of the 18 transfers to take place under the 2009 round were incomplete, but only two such transfers remain to be completed at this point. These are the National Rehabilitation Hospital (NRH), Dún Laoghaire, and the Bláithín Childcare Facility, Drumcondra, both to the HSE (although the latter will ultimately be transferred to Tusla),

For each of these outstanding transfers, particular legal or technical issues have caused the transfer process to be delayed, but I know that progress has been made in progressing the transfers and that all of the stakeholders involved are working to conclude these transfers as a matter of priority. I would also note that, in each case, the properties concerned are in use by the intended beneficiary, which has meant that there has been no impact on the continued use of the properties while the legal transfers are being progressed.

This was also the case for previously transferred properties where, for example, properties were in use as schools or for other forms of educational provision even in advance of their formal transfer to the Department.

As I have previously outlined to the Committee, the transfer of properties from congregations to the State is a complex process, involving multiple, discrete steps, each of which must be dealt with in sequence and can involve a wide range of stakeholders, including the parties involved in the

transfer, their legal representatives, and other State bodies such as the Property Registration Authority and the Charities Regulator. At each stage of the process, various issues can be encountered which would require resolution before the next stage could be progressed.

After the receipt of the initial offers from the congregations, individual properties were accepted in principle before an assessment of each individual property was carried out to establish its suitability for transfer and potential use. This would also have involved identifying the potential transferee, such as the Department, the HSE, or local authority. Following this process, the individual properties could then be formally accepted for transfer.

At this point, legal enquiries would be made by the legal representatives for both parties, based on information and documentation provided by the transferring congregations. This could give rise to significant delays, compounded by the fact that, in the majority of cases, the properties had been in the possession of the congregations for an extended period, and little or no prior work had been done on establishing legal title to the properties. The 2002 Agreement in particular required that any transfers must be of good and marketable title, commensurate with prudent standards of conveyancing practice in Ireland.

The effect of this was, in some cases, to delay the establishment of good and marketable title to the property. As I have previously informed the Committee, while 64 properties were accepted for transfer under the 2002 Indemnity Agreement, good and marketable title could not be established for four properties. In accordance with the Agreement, the congregations concerned had the opportunity to make alternative offers, and ultimately the congregations instead made contributions of cash in lieu. In July 2013, the Government agreed that the Minister for Education could accept properties pursuant to the Agreement that may not fully meet the standard of good and marketable title. The Minister subsequently agreed to accept a number of properties where the qualifications were technical and did not materially affect the valuation of the property.

Even where good and marketable title can be established, the resolution of any issues identified can involve both legal and technical enquiries to be made. For example, pre-contractual enquiries may require establishing that planning for any development on the sites of the property was in compliance with relevant regulations. Other issues encountered could be issues with the boundary to the property, right of way, wayleaves for services, or access to the property. In some cases, the property might have been shared by different owners, leading to complications regarding access to services and/or utilities, or the usefulness of the site may be dependent on obtaining wayleaves over adjoining sites to ensure the site was serviced.

The resolution of these issues could involve correspondence with the legal representatives for both parties, the preparation of PRA-compliant maps, site visits and the compiling of technical assessment reports on the site/property.

While a pragmatic approach to the resolution of property title issues was adopted, it was still necessary to establish the facts about the property as well as obtaining legal advice on any issues identified. In some instances it would have been found, on balance, that it was necessary to accept a property title that may be qualified. Under the 2002 Agreement, which explicitly required that good and marketable be established, this would have required the preparation of a report on the property title by the CSSO and consideration of this report by the AGO, the seeking of a Government Decision as to the acceptance of the property with qualified title as well as obtaining the consent of the Minister for Education.

In other cases, the transfer could be delayed due to issues outside the direct control of the parties involved, e.g. third party litigation over a boundary dispute such as has been experienced at Mounthawk Secondary School.

In addition to the above, the consent of the Charities Regulator is required where the property is owned by a charitable trust, as was the case for many of the properties involved. This could, in turn, give rise to issues which required to be resolved before the transfer could be progressed further.

The final step of the process is for the new owners of the property to be registered with the Property Registration Authority (PRA). In some cases, further issues can arise at this stage, which can lead to further delays.

In my letter of 30 April, I outlined the position in respect of the 4 individual properties remaining to be transferred to the State, two under the 2002 Indemnity Agreement, and two under the 2009 offers.

With regard to Mounthawk Secondary School, which is the only remaining property to transfer to the Department of Education, the most significant delay arose from circumstances outside the control of either party involved, i.e. litigation over the boundary of the site which involved a third party. In my previous update, I informed the Committee that this litigation has now been resolved. An agreement has been reached between the current site owners and the third party which involves the exchange of two small parcels of land between the parties.

The Department has now undertaken a site visit and is satisfied that maps prepared reflect the boundary adjustments are accurate. The registration of the site with the revised boundary is now with the PRA. To assist the Minister's consideration of consent for the transfer, the CSSO is preparing a report on the property title and qualifications to that title. As the property is being transferred under the 2002 Agreement, the CSSO report will also be provided to the AGO for Government decision. Where Ministerial consent is forthcoming, the consent of the Charities Regulator will then be sought. It is expected that the transfer will be finalised in early 2022.

The remaining three individual properties, the NRH, the Sacred Heart Centre, and the Bláithín Childcare Facility, are to transfer to the HSE. As the Committee will be aware, the recent ransomware attack on the HSE's ICT systems means that it has not been possible to receive a further update in relation to these properties, but I have set out the relevant issues below.

With regard to the Sacred Heart Centre, which is transferring under the 2002 Agreement, legal title to this property has transferred to the HSE. The HSE is therefore the legal owner of the property. An application has been made to the PRA for first registration of the HSE as owners of the property. The HSE is awaiting a response to this application, which may involve a request for further information. Once this registration has been completed, the HSE's solicitors will then be in a position to issue a certificate of title to the property, and the transfer will be complete.

A significant cause of the delay in the transfer of this property was the fact that good and marketable title, as required by the 2002 Agreement, could not be established as the congregation had only "possessory title" to one of the five lots making up the site. It was subsequently assessed that this does not give rise to significant risk, as the lot is in the middle of the site, has no boundary with lands owned by third parties, and makes up only a small percentage of the total site.

This was one of seven sites where the then Minister, in 2013, decided that the properties could be accepted pursuant to the 2002 Agreement, notwithstanding the fact that they may not fully meet the standard of good and marketable title.

The transfer of the National Rehabilitation Hospital has particular complexities arising from the situation of the hospital on the 33 acre site to be transferred to the HSE. While the principal conditions of the contract to transfer the property have now been agreed, the transfer requires the leaseback of the portion of the site on which the hospital sits to the hospital trust, which, in itself, requires the agreement of the boundaries of the leased portion of the site and the terms of the lease. The HSE has informed the Department that there is ongoing engagement between the parties concerned to finalise these matters.

Finally, regarding the Bláithín Childcare Facility, which is being transferred by the Congregation of Our Lady of Charity and the Good Shepherd and will ultimately transfer to Tusla, the congregation's solicitors have made an application to the Charities Regulator for consent to the transfer of the property. Once this consent has been received by the congregation, the remaining steps of the process can proceed.

In addition to these individual properties, I also informed the Committee of progress in relation to the transfer of the Christian Brothers Playing Fields to the Edmund Rice Schools Trust (ERST). It has been agreed that the proceeds arising from any future sales of the properties concerned will be shared on a 50:50 basis between the Department and the ERST, and Department is engaging with the congregation on an ongoing basis in relation to this matter.

The congregation recently informed the Department that the transfer of a further number of playing fields to the ERST has been completed, and that the congregation, as well as legal and technical consultants engaged on its behalf, continue to prioritise finalising the remaining transfers.

Conclusion

It is acknowledged that the transfer of certain properties under both the 2002 Indemnity Agreement and the 2009 Voluntary Offers has taken a considerable period of time to progress. However, it is also the case that the legal transfer of properties of this nature can be a complex matter, involving a range of stakeholders, and that unforeseen issues can arise. The outstanding transfers relate to properties which had particularly complex issues, but I am satisfied that significant progress has been made in respect of these transfers.

If the Committee requires further information in relation to any particular property, or the overall process, I would be happy to provide it. I will in any event provide a further update to the Committee on the outstanding transfers in the coming months and on a regular basis thereafter.

Yours sincerely,



Seán Ó Foghlú
Secretary General