

Tomintoul & Glenlivet Development Trust
43 The Square
Tomintoul
AB37 9ET

Suite 4, Moray House
16 – 18 Bank Street,
Inverness.
IV1 1QY
Email: ronnie.macrae@chtrust.co.uk
Telephone: 01463 233549
7 August 2024

Dear TGDT,

Thank you to TGDT and all residents for your patience during the period since practical completion of the housing project, and apologies for the extended delays in reaching the end of defects period which as you know has gone past the expected date in March 2024.

I appreciate this has been a challenging time and caused frustration so I felt a written summary of the current situation might help clarify various issues and put some context on where we are currently and what has led to this situation.

TGDT's Development Agent is Communities Housing Trust (CHT) and the project clerk of works was CDMM of Inverness. CDMM were employed directly by TGDT and visited site frequently to check work. They reported regularly to the trust and project team and have a catalogue of photos for reference.

The twelve houses at the former secondary school site in Tomintoul were constructed by Alpha Projects Scotland under a fixed price design and build contract with TGDT.

The four sold properties were valued at £220k and £235k. The eight rentals between £175 and £195k. The market rental values were £625 pcm for the 2-bedroom houses and £700 for the three-bedroom properties.

The sale prices for the 4 properties sold was £140k and £170k. This represents a discount of 27% and 37% respectively. The rentals are £450 for a two-bed house and £480 for a three bed a discount of 28% and 32% respectively. All properties are subject to a £30 pcm fee to contribute towards maintenance costs such as gritting and snow clearing, repairs to the lock block paving etc.

The snagging and defect period began in March 2023 with an expected end date of March 2024 and owners and tenants were asked to report issues to CHT, these were passed to Alpha Projects for remedy. The development contract continues to be in force until the defects are rectified. TGDT is holding a retention sum which is only payable to Alpha Projects when snagging is complete.

CHT continue to act as TGDT's letting agent and are the first port of call for tenant issues.

Most complaints of a serious nature have been highlighted from the owned properties over recent months, and whilst there are still defects to be rectified on the owned and rental properties there does appear to be a difference in issues.

At one point soon after occupation it was suggested that rental tenants were afraid to raise complaints as they felt their security of tenure might be affected, however CHT provided written clarity they had security of tenure as long as the terms of the rental agreement were adhered to, and as such it was their right to raise complaints as they felt were required and indeed were encouraged to do so.

The discounted sale properties have a Rural Housing Burden (RHB) attached, which protects the discount in perpetuity for the four sold properties, which have a discounted sale range for 27% - 37% discount below market value. The RHB has a right of pre-emption so should the current owner decide to sell the property it must be offered to the Rural Housing Body, which in this case is CHT on behalf of TGDT, at the agreed % below market value.

The contracts for housing developments almost exclusively require that a defects liability period follows practical completion, to allow for any defects that may not have been obvious at handover to be identified by residents and reported during that period. It is widely accepted that no development will be handed over for occupation without some undetected defects that will require remedy once occupiers have identified them through their living and use experience.

The defects liability period for this contract stated that defects were to be completed within one year from practical completion and the client (TGDT) retains a capital retention sum from the agreed contract sum that would cover the costs of reasonable defects in-case the contractor (Alpha Projects) did not carry out their responsibilities set out within the contract.

Assuming that all defects are agreed by both parties as being complete then the retention sum held by the client can be released to the contractor and the contract has reached final completion. Should the contractor fail to meet their responsibilities, and the client terminates the contract for non-performance, then the client can use moneys retained to employ a replacement contractor. If the new contractor's reasonable costs are above the sums retained, then the client can reclaim any justifiable extra costs from the original contractor based on proven non-performance.

It should be noted that the original contractor and their team can still be found liable for Latent Defects (serious defects not obvious upon completion to a competent person in construction, materials, design or workmanship) even after the contract has been signed off as complete.

The above scenario relies on all parties being reasonable, and CHT would always advise that care be taken when assessing reasonableness. On this project I would advise that whilst there have potentially been times when elements of work could have been carried out more quickly, the contractor has generally performed within their responsibilities and at no point suggested they would not fulfil their responsibilities even when faced at times with a hostile environment and unhelpful statements from external parties.

During our extensive discussion with various parties with an interest in this development, at no point has any of those with building experience suggested the build was of poor quality or below normal expected standards.

This project started just before COVID was declared and the impacts of Brexit became clear, both of which created a period of extreme and unwarranted uncertainty, having a considerable negative impact on all sectors but especially the construction sector, where costs increased massively, and labour became extremely scarce which again impacted costs negatively and remains the case.

During this period the contractors performance was above the level experienced by CHT and many partner organisations on other projects, where contractors costs increased substantially and projects stalled completely until disputes had been settled and increased contract sums were accepted or contracts were amended. It should be noted that contract costs were increased for this project however this was in agreement with all funding partners and these were agreed as justifiable and reasonable.

During a defects period the contractor is not bound to attend to all reported issues as some may be deemed wear and tear or damage and as such be the responsibility of the occupiers, landlord or owner and only agreed defect items should be attended to under the contract. It should also be made clear that not all defects reported and agreed are classed as urgent and in this case the contractor has until the end of defects period date to complete these items. CHT are of the opinion that the contractor in most cases did deal with urgent defects in as timely a manner as the wider sectoral issues allowed.

CHTs advice has been that as the contractor has been performing to a reasonable standard within contract terms there is no justification for terminating the contract due to non-performance, even though it has gone past the recognised one-year period for defects completion. From our experience it is essential that the contract be adhered to as diligently as possible in order to protect all parties involved including TGDT as main client and landlords, as well as purchasers who have purchased their properties.

Should the contract enter into a dispute scenario between client and contractor then we feel that there will be an extremely strong possibility of extended time delays in identifying new contractors as there is limited availability at the present time. More worryingly it would almost certainly mean an increase in costs and a very strong possibility these would not be recoverable via the contract as it may have been terminated unjustly. The contract once delivered completely and with no dispute protects the client (TGDT) as landlords and owners by securing the warranties and ensuring appropriate legal come back should anything go wrong in the future.

The reason behind our advice is that we feel the contractor has a very strong case and justification for delays, namely that they have experienced sectoral changes and disadvantage, lack of labour availability and importantly have allegedly been subjected to intimidating and unreasonable behaviours of parties within the community. Examples of this are below and whilst we appreciate frustrations were present, these issues can not be ignored or accepted. These actions are likely to have put any contractor on the back foot and given them justification for taking extended times to consider their position in contract terms.

1. During a meeting with TGDT, CHT and occupiers plus some external parties in November 2023 numerous claims were made, some of which were of a very serious nature and detailed below. Whilst CHT felt these claims were unjustified and unlikely

- to be accurate at the time we agreed to investigate thoroughly which given the nature of the claims proved more difficult and time consuming than expected.
2. It should be noted that some of the elements below are of a serious and potentially libellous nature and as such have been checked by CHT legal team.
 3. Claims made during the meeting included statements that said the contractors were incompetent and had been using inferior materials not specified in the contract. From CHT investigations we would categorically state that there is no evidence of this, or we believe any justification.
 4. There were suggestions that all parties linked to the project such as CHT, Consultants and statutory bodies such as Moray Council and CNPA were also incompetent and collaborating with the contractor.
 5. It was also stated by one party that Moray Council had taken bribes to sign of the completion certificate, which again CHT have found no evidence of or have any justification to suggest this would ever have been the case.
 6. Further claims have been made that Building Warrant Completion Certificates were fraudulently obtained with incorrect dates. We have attached copies to this letter to clarify that is incorrect.
 7. It was stated that the electrical installation on the project was dangerous, and the houses were at risk of burning down. It had been hoped that NICEIC would investigate this complaint, however they cannot investigate all spurious complaints without justification and evidence which was not available given all the required certification was in place and correct. Following reports of electrical shocks having taken place further checks were carried out which confirmed the electrical installations were safe and indeed were of a good standard of workmanship. It should be pointed out that electric shock can be caused by various issues such as faulty occupier equipment plugged in to the approved electrical system or other means such as wet hands etc.
 8. It was claimed that electrical checks had not been professionally carried out and it was impossible that they had been because certain units had not been fitted until after electrical sign off. It has been clarified that these units could not be fitted before electrical sign off as the voltage checks required to ensure safe wiring is in place would have damaged these units had they been fitted before the check was carried out.
 9. It was claimed that it was impossible for the various renewable installations to work together, and the claimant would “eat their hat” if they did. Again, independent investigation was commissioned at extra costs gratefully funded by partners which confirmed this was not the case. Whilst there had been issues with technologies providing conflicting advice we are content that this has been clarified and revised and updated user information/literature has been provided recently.
 10. To be clear, on site there is one air source heat pump that has not been working for a prolonged period and currently remains not functioning. Meantime TGDT have provided alternative heating options and will work with the affected occupant to balance any extra costs incurred. Alpha Projects have worked diligently over recent months to rectify the heat pump issue but had found reluctance from the manufacturer to accept responsibility and offer a replacement unit. This has come at considerable cost to the contractor as they obliged with the various investigations and replacement parts requested by the manufacturer. We have been aware of the many emails and contractor endeavours in this respect. It's only recently the manufacturer accepted

responsibility for a replacement heat pump, which has now been booked for 14th August 2024

11. It was claimed that the housing is unaffordable to heat and in comparison, more costly than other housing units. Again, this has been investigated as far as possible based on the limited information available, and it would appear costs are in line with what we would expect. It should be noted that since the start of the project when assumptions were based on previous unit costs, Brexit, Covid and Ukraine war have negatively impacted these costs which have increased significantly, and this should be taken into consideration when assessing costs.
12. There have been justifiable concerns raised about the matching up of meter numbers with property addresses which made it difficult to assess accurate billing. Unfortunately, at the time of securing a supplier for customers TGDT had extremely limited options and it was only EDF that would take the development on at the time. Most suppliers were not taking new customers as many suppliers had gone out of business and remaining ones had limited capacity and were also increasing prices. When installing the meters the engineers recorded the meter numbers against the wrong addresses, which was not clear until billing had started after occupation. CHT subsequently offered to act on behalf of occupiers providing occupiers provided a mandate authorising CHT to do so which was required by the suppliers as they would ordinarily only deal with the occupiers. Some occupiers did authorise CHT to investigate but not all and the process has been challenging with EDF. TGDT and CHT did request assistance from the local MSP who helpfully contacted EDF but unfortunately that process has remained challenging albeit most houses on the development are now rectified.
13. Contractors have lost sub-contractors who have refused to return to site as they had allegedly been subject to intimidating and unreasonable behaviour by a minority of the parties engaged in advising occupiers. These included sub-contractors being accused of suggesting neighbouring occupiers were not capable of understanding the systems in place, however the sub-contractors on this occasion were clear that it was not them but the other party that had made these claims. For the avoidance of doubt CHT staff also had concerns about how external parties referenced other occupiers and parties and have recorded notes of these incidents.
14. Given the current climate in the construction sector it has been extremely challenging to identify replacement sub-contractors. TGDT and CHT worked with the contractor to contact as many possible sub-contractors as possible before identifying suitable replacements willing to work on the project.
15. The claims being made in the press and on TV has raised the level of cautiousness for all parties related to the clients on this project as they can have an extremely negative affect on reputations. As such this has required careful and thorough investigation which has slowed down completion of the contract.
16. The contractors attended to several issues reported in January 2024, however various defects remain outstanding and we expect completion of all of these excepting the entrance doors to be completed mid-August, with entrance doors to be competed as soon as practicable after that.
17. It should be noted that not all issues reported fall within the defects classification as some will be classed as natural wear and tear and others damage, which remain the responsibility of the landlord or owners.

Should the contract end up in a dispute scenario there is a strong possibility that contractors or consultants would revert to their professional indemnity insurances, which they have in place to protect them from such claims. If this were the case our advice would be that all parties are extremely clear on the claims made and be very sure they can be evidenced.

I am confident that with a little more patience the housing delivered will be completed to a very good standard and provide happy homes for the Tomintoul community for many years to come, all of which will be protected in perpetuity as affordable.

My sympathies do lie with those who have been frustrated or inconvenienced by the time delays, but do hope they can understand this was an unprecedented time for the construction sector. Again, the majority of occupiers appear willing to be patient whilst we work through the remaining issues to secure a positive outcome for all.

I would like to congratulate TGDT on your diligence and patience, alongside your ability to work with all required stakeholders who also deserve credit for their support. This work has been to the benefit of the occupiers and owners, much of which is behind the scenes and not recognised by the public.

Yours Sincerely

Ronnie MacRae

Ronnie MacRae
Chief Executive Officer