

10th October 2018**To: The Chairman and Members of
South Central Area Committee**Meeting: 17th October 2018

Item No.

With reference to the disposal of the Council's fee simple interest in a ground floor Retail Unit at No. 7 Bow Lane West, Kilmainham, Dublin 8 and adjoining plot of ground.

By way of Indenture of Lease dated 17th December 2014 a ground floor Retail Unit at No. 7 Bow Lane West, Kilmainham, Dublin 8 and adjoining plot of ground the area of which is more particularly delineated on Map Index No. SM2010-0621(2) was demised by Dublin City Council to the Chocolate Factory Arts Centre Limited for a period of 20 years from 17th December 2014 and subject to an annual rent of €10,000 payable quarterly in advance. The terms for the grant of the lease included the option: "After 1 year of the lease has elapsed, the Lessee will have a 1 year option to acquire a 250-year lease in the property for the sum of €75,000 (seventy five thousand euro) plus VAT (if applicable)". Council Report 151/2012 refers. The lessee notified Dublin City Council of its intention to exercise the option to acquire a 250-year lease within the specified timescale.

In 2016 the Lessee obtained planning permission (Ref. 3006/16 refers) to develop a commercial building on part of the adjoining plot included in the lease. As the construction of the commercial building was not envisaged in the original negotiations which led to the grant of the 20 year lease from 17th December 2014, the matter was referred to the Council's Chief Valuer and subsequently to the Law Agent for advice on whether the City Council has the authority to seek to revise the terms of the lease dated 17th December 2014 – specifically with regard to the disposal price of the 250 year lease interest.

The Law Agent's advice was that Dublin City Council had the authority to seek to revise the terms and conditions. However, the Chief Valuer was unable to reach agreement on a revision of terms with the Lessee and Court Proceedings were initiated.

In an effort to progress the matter speedily Senior Counsel was engaged by the Law Agent and he directly entered into negotiations with his equivalent acting for the lessee. The Senior Counsel has now reported that the lessee is prepared to settle subject to the following terms and conditions:

1. That the disposal shall be in fee simple for the sum of €130,000.
2. The area to be disposed of is delineated on Map Index No. SM2010-0621(2) (for information purposes) A new map will be prepared for the City Council meeting.
3. Each party shall bear their own costs including the costs in respect of the litigation.
4. The issues relating to the drain which traverses the western corner of the site and its location are to be clarified and agreed upon for reasons of good estate management before legal documents are exchanged.

5. In the interest of good estate management, the ESB meter shall be re-located from the adjoining Council owned premises to within the area to be disposed. The existing right of way shown yellow on Map Index SM-2010-0621(2) shall no longer apply. A new map will be prepared for the City Council meeting).
6. The Chocolate Factory Arts Centre Limited shall covenant to guarantee the ongoing right of support to the adjoining Council owned properties i.e. first floor of 7 Bow Lane West and the entire of 6 Bow Lane West.
7. The Chocolate Factory Arts Centre Limited will (only if necessary) partake in a management company, if such a company were to be formed to manage the Housing Units.

In order to avoid potentially protracted litigation with consequent high costs and with no guarantee of a positive outcome for Dublin City Council it is proposed to proceed with the disposal in accordance with the terms and conditions recommended by Senior Counsel.

Paul Clegg

Executive Manager