

Item No.5 on Agenda

Report to the Planning and Urban Reform SPC

Disposal of Freehold and Leasehold interests by Dublin City Council

City Valuer's Office

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In response to a request from the Planning and Urban Form SPC, the objective of this document is to explain to members the process in arriving at values and terms and conditions for freehold and leasehold disposals of Council property.

On instruction from a client department e.g. Planning and Property Development, Housing, Parks, etc. the City Valuer's Office engage with applicants with a view to agreeing a disposal of City Council property by Sale of the Freehold interest or Grant of a Lease.

An important element of these disposals is the assessment of the appropriate Market Value.

What is a Freehold?

To hold a freehold title, is to have all rights and interests in a property and hold the benefits of unrestricted ownership.

What is a Leasehold?

A leasehold title is established by a lease agreement between a lessor (freeholder) and the lessee.

Dublin City Council enters into lease agreements for use of property e.g. retail units, offices, Community Buildings, Sports Grounds etc. A lease is a document that formalises this relationship between landlord and tenant and provides the tenant with the sole right to occupy and use the subject property for a fixed number of years, subject to the covenants of the lease. The relationship between landlord and tenant is governed extensively by legislation and case law.

How is the Market Value determined?

The International Valuation Standards Council (IVSC) defines 'market value' as:

'The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.'

(RICS Valuation – Global Standards 2017)

When determining a market value of a freehold interest, the valuer establishes a value primarily by analysing the comparable transactions to assess the value of the subject property, with due regard to the prevailing property market conditions.

When assessing the Market Value of a property the particulars of the property must be considered, including:

- Title held Freehold / Leasehold(is the purchaser already in occupation of the property under a lease with rights of renewal, or statutory purchase rights)
- Type of Property
- Size
- Location
- Condition
- Availability of Services
- Zoning, Planning History
- Access etc.

Each factor has an influence on the Market Value

How is the Market Rental Value determined?

The International Valuation Standards Council (IVSC) defines 'market rental value' as:

'The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.' (RICS Valuation – Global Standards 2017)

When determining a market rental value, the valuer again analyses comparable transactions and considers current property market conditions. When drawing from comparable lettings particular attention must be given to the terms of the lease and the advantage or disadvantage they impose on the landlord or tenant; points to consider include:

- Location
- Size and Type of Property
- Restrictive User Clauses
- Duration of the lease
- Rent review pattern
- Inducements (e.g. rent free period, capital payments, stepped rents, etc.)
- Repair and Insurance covenants and responsibilities

The City Valuer's Office is required to determine values in line with all relevant legislation, case law and standard practices as determined by the Society of Chartered Surveyors Ireland and the Royal Institution of Chartered Surveyors.

Heads of Terms of a Property Sale :

Disposal can be on a statutory and non-statutory basis.

The terms and conditions of a disposal reflect those agreed as part of the negotiations, often including terms from the instructing department required to ensure the City Council's objectives from the disposal are met. The requirement of the City Council for the purchaser to deliver particular development on a site can affect the Market Value.

The standard items in the Head of Terms may include but are not limited to:

1. Identifying the property with reference to a formal map.
2. The title held by the City Council and the title being disposed of to the purchaser.
3. Title held by the purchaser in a statutory disposal.
4. The purchase price.
5. The deposit required.
6. The dates for exchange of contracts, deposits etc.
7. That the sale is subject to planning (if applicable).
8. The terms of the Development Agreement: this generally applies where the purchaser is required to deliver a particular type of development on the site/property within a defined timeframe allowing for planning and construction. There are usually a number of defined dates for (i) the exchange of contracts, (ii) the payment of the deposit in full or over a phased basis (iii) submission of the planning application (iv) planning permission (v) commencement of building works (vi) completion of the development etc.
9. The time at which title will transfer.

10. The liabilities regarding costs e.g. professional fees etc.
11. The requirement for statutory consents to the proposed disposal.

Heads of Terms for Grant of a Lease:

The terms and conditions of a lease reflect those agreed as part of the negotiation process, regularly including particular terms and conditions as defined by the instructing department

The terms and conditions of a lease proposal can include but are not limited to:

1. Identifying the property with reference to a formal map.
2. The title held by the City Council.
3. The lease term.
4. The type of lease, full repairing and insuring or internal repairing and insuring.
5. The annual rent (Market Rent – Commercial Lease/ Market Rent Abated – Social or Community purposes)
6. The Rent Reviews provisions.
7. The intended/required use of the property, restrictive user clause.
8. The requirement to sign a Deed of Renunciation.
9. The minimum insurance requirements.
10. That any alterations to the property may require landlord consents and approvals.
11. The termination clause and the responsibilities of the tenant at the end of the lease term to remove all goods, furniture and temporary partitions to the satisfaction of the City Council
12. The liabilities regarding costs eg. professional fees etc.
13. The requirement for statutory consents to the proposed Grant of Lease.

Ground Rent Disposals

Disposal of Fee Simple Interest in properties held by the Lessee under a long lease subject to a Ground Rent

These apply to both residential and commercial properties held by a lessee under a long lease, often for durations of 99yrs to 999yrs, whereby the lessee or a predecessor in title was required to develop the properties by building residential or commercial properties as defined in the lease.

The term Ground Rent is intended to reflect the rent paid by the lessee where the lessee or their predecessors built the buildings and is paying rent to the landlord for the ground only.

The rent (ground rent) is fixed in the lease and remains unchanged for the duration of the lease.

In this instance, the provisions of the Landlord & Tenant legislation provide the Lessee with the right to acquire the fee simple interest and aims to prevent the interest in the land from reverting to the landlord at the end of the lease term after the lessee had expended money building on the land.

Criteria for statutory entitlement to acquire fee simple of a non-domestic property

Prior to valuation, the Law Agent determines if a statutory entitlement exists.

The right to buy out the freehold was established in the Landlord and Tenant (Ground Rents) Act, 1967, additionally the tenant may have a right to a new tenancy under the Landlord and Tenant (Amendment) Act, 1980.

There have been many additions and amendments to these Acts and accordingly the principal requirements to establish a tenant's entitlement to acquire the Fee Simple interest are set out in Sections 9-16 of the Landlord and Tenant (Ground Rents) (No.2) Act, 1978. The main requirements are set out below:

- (a) That there are permanent buildings on the land and that portion of the land not covered by the buildings is subsidiary to them.
- (b) That the permanent buildings are not an improvement within the Act.
- (c) That the buildings were not erected in breach of a covenant.
- (d) That one of the alternative conditions set out in section 10 is satisfied.

There are seven alternative conditions under Section 10 of the 1978 Act – only one of these conditions must be satisfied, see Appendix 1.

Valuation of Fee Simple with statutory entitlement

A valuation is undertaken by the City Valuer's Office on behalf of Dublin City Council and the lessee often appoints an agent to act on their behalf in negotiations to agree the purchase price.

The Purchase Price is determined having regard to S.7 of the Landlord and Tenant (Amendment) Act 1984. Section 7(3) states that "the purchase price shall be the sum which, in the opinion of the

arbitrator, a willing purchaser would give and a willing vendor would accept for the fee simple or other interest at the relevant date having had regard to”:

- (a) the rent payable for the land by the person acquiring the fee simple
- (b) where, at the relevant date, the land is held under a lease which provides for an increased rent payable within fifteen years after that date, the amount of that increase and the time when it becomes payable
- (c) the current interest yields on securities of the Government issued for subscription in the State
- (d) if the land is used for the purposes of business, or exceeds one acre in area and is not used for the purposes of business, the area and nature of the land, its location and user and the state of repair of any buildings or structures thereon,
- (e) the price paid for the fee simple or any other interest in the land on a sale taking place on or after the 22nd day of May, 1964,
- (f) any mortgage or other charge on the interest in the land of any person from whom, mediately or immediately, the person acquiring the fee simple holds the land,
- (g) the costs and expenses which, in the opinion of the arbitrator, would be reasonably incurred by the persons from whom, mediately or immediately, the person acquiring the fee simple holds the land, in investing the purchase money payable in respect of the acquisition of the fee simple,
- (h) the costs and expenses which, in the opinion of the arbitrator, have been incurred by a person acquiring the fee simple who holds the land under a lease by reason of the failure of the lessor to maintain any amenities which he is required to maintain under a covenant in the lease,
- (i) the current price of the immediate lessor's interest in land held under leases or yearly tenancies similar to the lease or yearly tenancy, as the case may be, under which the land is held by the person acquiring the fee simple, and
- (j) such other matters as are relevant to the determination of the purchase price.

Section 7(4) Deals, inter alia, with situations where the lease has expired.

When determining the purchase price it should be noted that considerable regard is given to the provisions of the relevant legislation and judicial decisions in establishing values. These valuations are largely on the basis of comparable evidence of disposals of similar properties; amount of ground rent, comparisons are drawn from previous City Council disposals, Open Market Fee Simple Disposals subject to a Ground Rent and the awards of the County Registrar.

The factors which have a significant influence on the purchase price include the duration of the lease unexpired and the annual rent together with the tenant's right to purchase and/or rights to a new lease. When analysing comparable information the valuer will seek out fee simple disposals with similar lease duration/years remaining, similar passing rents and analyse the determined purchase price. The analysis usually breaks back the sale price into a multiplier of the rent.

The multipliers of rent for commercial/non-residential ground lease disposals vary significantly reflecting the individual factors as discussed above. In the last year the City Council has approved the disposal of Ground Rent Fee Simple Interests on an entitlement basis at multipliers of the rent varying from 100-330, every disposal is individual.

Should agreement not be reached, the legislation provides for the matter to be determined by an arbitration process via the County Registrar, who will assess a price of the fee simple as per the criteria as detailed in S.7 of the Landlord and Tenant (Amendment) Act 1984 (detailed above).

Restrictions on the right to buy out a Fee Simple Title

Breach of Covenant to Build

A lessee is excluded from acquiring the fee simple if they are in breach of covenant to erect a building or carry out the specified development on the land.

Rent Review Clause

The right to acquire a fee simple is eliminated in the case of non-domestic tenants who have a lease which is subject to a rent review clause within 26 years from the commencement of the lease. For example, tenants in industrial estates who have constructed industrial units on sites leased from Dublin City Council would generally have a rent review clause included. It would be common for such lease agreements to last c.99-150 years in duration with a review of the rent payable occurring every 5-21 years.

Sublease where head lessor does not have a statutory entitlement

As per S.16(2)(f) of the Landlord and Tenant (Ground Rents) (No.2) Act 1978 there is no entitlement to acquire the fee simple in cases where the lease is a sublease granted by a lessee who does not hold a statutory entitlement.

Valuation of Fee Simple with no statutory entitlement

In this instance, the lessee is deemed to apply to acquire the fee simple on a **non-entitlement** basis and the sites are valued in line with standard practices having regard to the relevant market values and all legal considerations as necessary.

Domestic Fee Simple

Dublin City Council's disposal of the ground leases for domestic property is subject to S.26 of the Landlord & Tenant (Ground Rents) (No.2) Act, 1978, it applies to properties which were purchased on a long lease from Dublin City Council before May 1978. From that date it became illegal to create a residential ground rent under the Landlord and Tenant (Ground Rents) (No. 1) Act 1978, "An Act to prevent the creation of new leases reserving ground rents on dwellings and to provide for related matters", this Act came into force on 16th May 1978.

Applications are processed by the Dublin City Council Housing Rents & Tenant Purchase Section and Property Development Department.

To reach a value for the acquisition of the fee simple interest, a multiplier is applied to the rent. The current multiplier based on the legislations is **87.11**. This multiplier is revised monthly by the City Valuer's office and, as per the legislation, is based on analysis of Government bond interest rates and prices as quoted on the stock-exchange.

$$\begin{array}{rcl} \text{Annual Rent x Multiplier} & & = \text{Purchase Price} \\ \text{E.g. } \quad \text{€12 x 87.11} & & = \text{€1,045.32} \end{array}$$

The sale is completed by Dublin City Council's Law Department, and the applicant's Freehold Title is then registered in Land Registry.

Summary

The rights of the property title holder whether landlord and tenant, are regulated extensively by legislation and judicial precedent. Dublin City Council is bound by law to give due regard to this when establishing values and when agreeing terms and conditions for a disposal by Sale or Grant of a Lease.

In the case of general disposals; Sale of a Property or Grant of Lease, the preparation of a professional valuation ensures the recommended Market Values are determined in accordance with property industry standards established by the leading professional bodies.

Separately, the disposal of Ground Rents can be on an entitlement or non-entitlement basis. An entitlement to acquire the Fee Simple interest can apply to both residential and commercial/non-domestic properties held under a long lease once the statutory requirements are fulfilled. Disposal of Ground Rents on a non-entitlement basis generally applies to commercial properties e.g. Industrial properties held on a long lease where the lease provides for a rent review.

A leaseholder's statutory entitlement to acquire a fee simple is safeguarded and the aim of the legislation is to protect the leaseholder from being disadvantaged, with the proviso that they have fulfilled all the relevant legal requirements and necessary obligations as per the lease agreement. Each application that is received by Dublin City Council is examined, assessed and processed in a careful and professional manner in the interests of Dublin City Council and the applicant.

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Senior Valuer

Appendix 1

Section 10, Landlord and Tenant (Ground Rents) (No.2) Act, 1978

1. Section 10(1): the permanent buildings were erected by the person who at the time of their erection was entitled to the lessee's interest under the lease or were erected in pursuance of an agreement for the grant of the lease upon the erection of the permanent buildings.
2. Section 10(2): that the lease is for a term of not less than fifty years and the yearly amount of the rent or the greatest rent reserved thereunder (whether redeemed at any time or not) is of an amount that is less than the amount of the rateable valuation of the property at the date of service under section 4 of the Act of 1967 of notice of intention to acquire the fee simple or the date of an application under Part III of this Act, as the case may be, and that the permanent buildings on the land demised by the lease were not erected by the lessor or any superior lessor or any of their predecessors in title: provided that it shall be presumed, until the contrary is proved, that the buildings were not so erected.
3. Section 10(3): that the lease was granted by a lessor to the nominee of a person (in this paragraph referred to as the builder) to whom land was demised for the purpose of erecting buildings thereon in pursuance of an agreement between the lessor and the builder that the builder having contracted to sell the buildings would surrender his lease in consideration of the lessor granting new leases to the builder's nominees.
4. Section 10(4): that the lease was granted by a lessor to the nominee of a person (in this paragraph referred to as the builder) in pursuance of an agreement between the lessor and the builder that the lessor, upon the erection of the buildings by the builder, would grant leases to the builder's nominees.
5. Section 10(5): that the lease was granted, either at the time of the expiration or surrender of a previous lease or subsequent to such expiration or surrender (a) at a rent less than the rateable valuation of the property at the date of the grant of the lease, or (b) to the person entitled to the lessee's interest under the previous lease, provided that the previous lease would have been a lease to which this Part would have applied had this Act then been in force and provided that it shall be presumed, until the contrary is proved, that the person to whom the lease was granted was so entitled.
6. Section 10(6): that the lease is a reversionary lease granted on or after the 31st day of March, 1931, to a person entitled thereto under Part V of the Act of 1931 or the Act of 1958, whether granted on terms settled by the Court or negotiated between the parties.
7. Section 10(7): that the lease, being a lease for a term of not less than fifty years, was made-

- a) partly in consideration of the payment of a sum of money (other than rent) by the lessee to the lessor at or immediately before the grant of the lease and, for this purpose, any money paid in redemption of any part of the rent reserved by the lease (whether the money was paid in pursuance of a covenant in the lease or in pursuance of an agreement made between the lessee and the lessor during the currency of the lease) shall be deemed to be part of the consideration, or
- (b) partly in consideration of the expenditure (otherwise than on decoration) of a sum of money by the lessee on the premises demised by the lease, or
- (c) partly in consideration of both that payment and that expenditure, where the sum so paid or expended or the total of those sums was not less than fifteen times the yearly amount of the rent or the greatest rent reserved by the lease, whichever is the less.

The lease must be for 50 years or more and must have involved payment of a fine or expenditure on the premises such as an improvement or repairs (decoration cannot be taken into account) or a combination of both a fine and expenditure of at least 15 times the yearly rent.

Condition 7 is extended by the Landlord and Tenant (Amendment) Act, 1980, s72. To a lease of less than 50 years if:

- (a) the lease is a sublease (whether mediate or immediate) under a lease (in this section referred to as the superior lease) to which Part II of that Act applies,
- (b) the land demised by the lease is the whole or part of the land comprised in the superior lease, and
- (c) the lease is made for a term which equals or exceeds the lesser of the following periods, namely twenty years or two thirds of the term of the superior lease, and in any case expires at the same time as or not more than 15 years before the expiration of the superior lease.