

23/03/2021

To the Chairperson and Members of
The Central Area Committee

Meeting: 08/05/2021

With reference to the disposal of 28 Abbey Street & 109 Marlborough Street, Dublin 1 to Robert McCarthy and Michael McCarthy

Dublin City Council acquired 28 Abbey Street & 109 Marlborough Street, Dublin 1 (formerly The Plough Public House) in 2017 as 109 Marlborough Street is a protected structure and after years of neglect it was in a derelict condition and infested with rodents and pigeons. The property comprises two interconnecting four storey over basement buildings and since acquiring it the Council has cleaned out the property and made roof and wall repairs to prevent further pest ingress. Currently the building is only accessible using full P.P.E and there remains some water ingress from the roof.

In January 2020 the property was brought to market through a tender process. A number of submissions were received and Robert McCarthy and Michael McCarthy were the successful tenderer based on the specified award criteria for the competition including; Professional team and the inclusion of conservation architects, Financial offer, Proposed use and Previous conservation experience.

Robert McCarthy and Michael McCarthy (The Tenderer) propose refurbishing the property to provide a single ground floor and basement retail unit together with self-contained residential units on the upper floors.

Report of the Assistant Chief Executive No.352/2020 presented to the City Council on 7th December 2020 outlined a set of criteria for assessing the suitability of disposing of selected council owned sites and properties. The proposed disposal of 28 Abbey Street Lower and 109 Marlborough Street was assessed in accordance with the criteria and the required reports are attached.

The reports conclude that the proposed disposal meets the criteria as outlined. Therefore, it is now proposed to dispose of the building at 28 Abbey Street and 109 Marlborough Street, Dublin 1 to Robert McCarthy and Michael McCarthy (The Tenderer), subject to the following terms and conditions, which the Chief Valuer has recommended as fair and reasonable:

1. The property is shown outlined in red on Map Index No.SM-2020-0564.
2. The consideration shall be the sum of €550,000 (five hundred and fifty thousand euro) plus VAT in full and final settlement, payable as follows:
 - a 10% deposit on the signing of the contract, which must be within one month of receipt of the contract.
 - b 40% payable on the grant of planning permission.
 - c 50% balance to be paid on the transfer of title.

Interest at the rate of 12% per annum shall apply to outstanding amounts.

3. A shared pedestrian Right of Way for adjoining buildings exists between the subject property and Harbour Court, shaded yellow on the attached Map Index No. SM-2020-0564.
4. The Council shall be prepared to dispose of its freehold title or equivalent. Title to the subject property shall be transferred on Practical Completion of the approved development, as certified by the City Architect.
5. The contract must be signed and the deposit paid by the successful tenderer within 1 month of receipt of the contract.
6. The successful tenderer shall be permitted access to the property upon the signing of contracts via an emergency works licence to complete any works required to seal the roof and prevent further deterioration of the property. These emergency works will be carried out in consultation with Dublin

City Councils Conservation Architect. Only emergency works exempt from planning permission will be permitted.

All other works shall be completed under a building licence on receipt of planning permission.

All costs of the emergency works will be borne by the successful tenderer and no compensation shall be paid by the City Council in the event of subsequent planning permission being refused, or granted subject to onerous conditions.

7. The successful tenderer must lodge a planning application based on their tender submission; to comprise a retail unit at basement and ground level and self-contained residential units above
8. The planning application must be lodged within two months of signing the contract and a letter of consent to apply for planning permission will be provided. If a planning application is not lodged, the deposit will be returned (without payment of interest).
9. The successful tenderer shall be allowed two opportunities to submit a planning application to Dublin City Council and, if necessary, an appeal to An Bord Pleanála. All planning application related costs to be borne by the successful tenderer.
10. If planning permission for a development is either refused (by Dublin City Council or An Bord Pleanála), or granted subject to conditions which the successful tenderer considers onerous, then either party may rescind the agreement within four weeks of the refusal or final grant of planning permission without penalty or compensation due to the other party.

In those circumstances, the deposit will be returned (without payment of interest). Both parties must act reasonably in this regard.

11. The successful tenderer must commence work at the property under a building licence from the City Council within three months of the date of final grant of planning permission
12. That Dublin City Council Housing Department shall have first option on leasing, for a term between 10 and 25 years, or purchasing at an agreed market value (with provision for the appointment of an independent expert in the event of a dispute), all residential units developed at the premises. If leased by the Council, the lease will include three year rent reviews linked to the Harmonised Index of Consumer Prices (HICP), subject to the terms and conditions of the Long Term Leasing Scheme and the minimum fit-out requirements of same.
13. That the Building Licence will be for a duration of fifteen months.
14. All property investigations including archaeological investigations, ground works, service connections, planning fees, development and associated professional costs incurred in the delivery of the completed development at the property shall be paid by the successful tenderer.
15. In the event of the successful tenderer failing to commence and/or complete the building works in accordance with the planning permission, the Council shall be entitled to re-take possession of the building.

In this circumstance, any monies paid to the Council shall be forfeited.

16. The successful tenderer shall ensure that all necessary safety precautions are taken in accordance with Health & Safety Regulations and all other statutory requirements.
17. From when the contracts are signed until title is transferred, the successful tenderer will insure the property against fire and all other insurable risks with an approved insurance company and pay all necessary premiums

The insurance shall be in the joint names of the successful tenderer and the City Council and will be for such an amount as will provide cover for full reinstatement value of so much of the building as is erected at any time together with a sum for Professional Fees and removal of debris charges. The successful tenderer's financial institution may be a mentioned party on this insurance policy.

18. The successful tenderer shall take out and produce Public Liability Insurance in the sum of €6.5m and Employers Liability Insurance in the sum of €13m. Such policies shall indemnify Dublin City Council in name against all liability as owner of the property.

19. The purchaser shall not without the prior written consent of the Council assign, charge, or create any security interest over the proposed development.

The disposal to the successful tenderer shall not be capable of transfer or assignment or mortgage/charge save in the case of a financial institution which has entered into a facility arrangement or other form of security with the successful tenderer for the purposes of financing the development.

20. That any dates/time frames outlined above may be extended by the Executive Manager at his absolute discretion and all notices must be given in writing

21. Each party shall be liable for their own fees incurred in this transaction.

The agreement shall contain such other covenants and conditions as deemed appropriate by Dublin City Council's Law Agent.

No agreement enforceable at law is created or intended to be created until an exchange of contracts has taken place.

Richard Shakespeare

Assistant Chief Executive

01/04/2021

Date