



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Development Department

To the Chairman and Members of
the North West Area Committee

Meeting: 17th January 2017

Item No:

With reference to the proposed disposal of lands at Balcurris Road / Main Street, Ballymun, Dublin 11.

It is proposed to dispose of a site located at Balcurris Road/ Main Street, Ballymun, Dublin 11. This site is part of a brown field site that was once occupied by three blocks of high rise flats which have since been demolished to allow for future development to take place.

Following a tendering process, Lidl Ireland GMBH was selected as the preferred bidder. The subject site is shown outlined in red on Map Index No SM-2016-0494, a copy of which is submitted with this report.

It is therefore proposed to dispose of this site to Lidl Ireland GMBH subject to the following terms and conditions:

1. That the property is located at Balcurris Road/Main Street, Ballymun, Dublin 11 and has an area of approximately 1.23 ha/3 acres, or thereabouts (*area to be confirmed by formal mapping*) and is shown outlined in red on attached Map Index No SM-2016-0494.
2. That the disposal price shall be the sum of €2,400,000 (two million four hundred thousand euro) plus VAT, payable in the following manner:
 - a) 20% upon signing of the Agreement for Lease. A draft Agreement for Lease shall be issued to the proposed purchaser within two (2) weeks of Council approval to the disposal of the site (if approved). The proposed purchaser will endeavour to sign and return the Agreement for Lease in the agreed form to the vendor's Solicitor within fifteen (15) working days of issue;
 - b) Eighty percent (80%) upon grant of leasehold title of the property to the proposed purchaser by the Council.

A 12% p.a. interest rate shall apply to any outstanding sums after they became due under the agreements.

3. That the proposed purchaser is Lidl Ireland GMBH.
4. That the vendor holds full unencumbered registered freehold title in the entire together with full vacant possession. The proposed purchaser's solicitors must be fully satisfied that the vendor has proven good and marketable title to the property.
5. That the disposal is subject to the receipt of satisfactory planning permission in a form acceptable to the proposed purchaser, for a mixed use scheme. The design of the scheme will be generally in accordance with the proposed purchaser's bid dated 2nd November 2016 but subject to any amendments that may be necessary following discussions with the Planning Authority.
6. That the transaction is subject to the proposed purchaser being satisfied with the results of site surveys for the property including, but not limited to, topographical, geotechnical and environmental surveys to be carried out at its own cost. All site survey results shall be known to the purchaser within 6 weeks of the date of final grant of planning permission.
7. That the proposed purchaser will endeavour to lodge a planning application for the proposed scheme of development on the entire property within eight (8) weeks of the Agreement for Lease being signed.
8. That the proposed purchaser shall be permitted to lodge one (1) planning application to the Planning Authority and shall be entitled (without obligation) to lodge a maximum of one (1) planning appeal to An Bord Pleanála, if required, as outlined in the bid proposal, dated 2nd November 2016.
9. That the proposed purchaser will be responsible for all costs in relation to the planning process.
10. That the transaction is subject to the proposed purchaser procuring a Declaratory Order for a liquor licence in respect of that part of the proposed development consisting of a licensed foodstore on terms and with conditions acceptable to the purchaser. The proposed purchaser will require 12 weeks from the date of the satisfactory grant of planning permission for the proposed development to fulfil this condition and shall use reasonable endeavours to procure the Declaratory Order.
11. That the proposed purchaser shall commence works on site within twelve (12) months of the date of final grant of planning permission.
12. That in the event that the conditions at 5, 6, 7 & 10 above are not satisfied, within the time periods stated (subject to such extensions as may be agreed between the parties), the agreements will be rescinded and the deposit paid by the proposed purchaser shall be returned to the proposed purchaser.
13. That the development of the entire property (ie. the approved mixed use scheme) shall be completed at the same time. The proposed purchaser shall complete the development within twenty four (24) months of the conditions at 5, 6 & 10 being satisfied.

14. That in the event that the development has not reached practical completion by the date that is no later than the date that is twenty four (24) months after that the conditions at 5, 6 & 10 have been satisfied (subject always to such extensions of time as may apply where delays are due to reasons outside of the proposed purchaser's control and/or due to the occurrence of force majeure events and/or any extensions as may be agreed in accordance with **condition 15** below in which case a reference to date of practical completion shall include any such extensions) the proposed purchaser shall pay to the vendor a sum of €10,000 (ten thousand euro) per month for three (3) months by way of liquidated damages for every month (or part thereof) after that date that practical completion of the permitted development is delayed.

In the event of a dispute arising between the parties at any time after the proposed purchaser has commenced the proposed development, the parties shall in the first instance refer the matter to a mediator to determine the dispute by mediation and failing resolution of the dispute between the parties through mediation then either; (i) the proposed purchaser may terminate the Agreement for Lease in which case the agreement will be rescinded and the deposit paid by the proposed purchaser shall be returned to the proposed purchaser; or (ii) subject to the proposed purchaser's right of termination, either party may refer the issue in dispute to an independent expert to determine the issue in dispute. The independent expert shall be appointed on the written application of either party to the Royal Institute of the Architects of Ireland (RIAI) or the Society of Chartered Surveyors Ireland (SCSI).

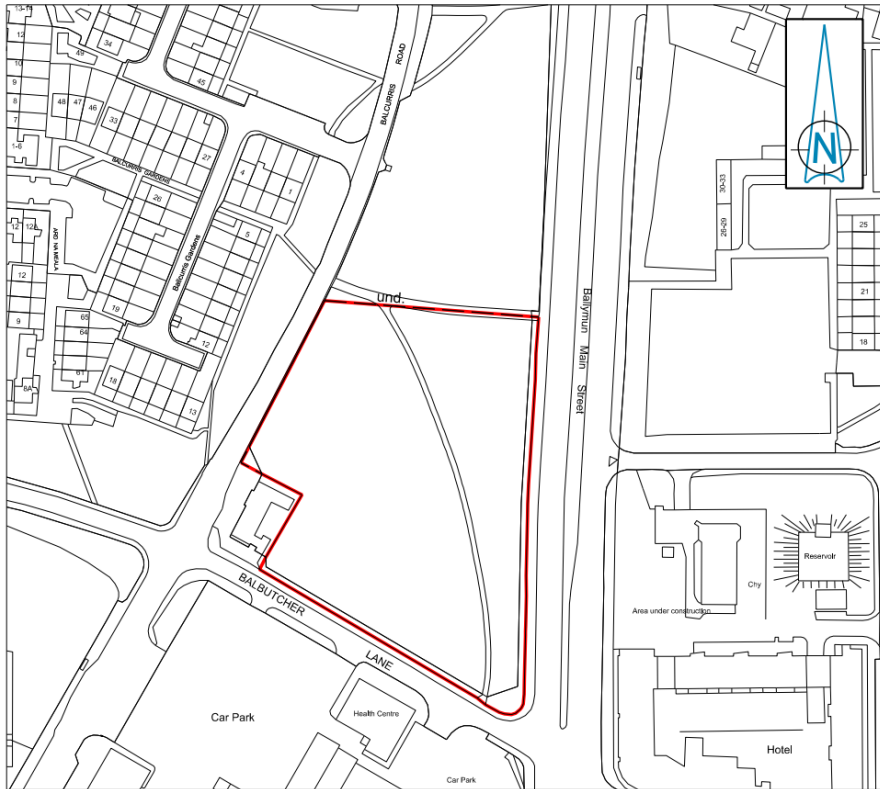
15. That without prejudice to Condition 14, if practical completion of the permitted development is not achieved by the date that is twenty four (24) months after the date that the conditions at 5, 6 & 10 have been satisfied then the parties shall review the schedule of works required to complete the development, as approved, and if necessary agree an extension of the period in order to facilitate the works being completed.
16. That title to be granted upon practical completion will be a 500 year lease from the vendor ("**Lease**") at an initial annual rent of €50 (fifty euro), subject to review at 5 yearly intervals linked to variations in the Consumer Price Index (CPI). The Lease will be executed by the vendor and the proposed purchaser at the same time as the Agreement for Lease and shall be held in escrow by the vendor pending practical completion of the proposed development and shall be released by the vendor to the proposed purchaser on the closing date referred to at **Condition 17** below.
17. That the closing date (ie. lease execution) shall be no later than ten (10) working days after the development has reached practical completion.
18. That the vendor shall enter into a written covenant in a form prepared by the purchaser's solicitors covenanting not to use or allow to be used any of the vendor's retained lands to the north of the property or any part thereof as shown outlined in blue on Map Index No SM-2016-0632 (*area to be confirmed by formal mapping*) **annexed** hereto ("**the Retained Lands**") for the purposes of a food retailer (licensed or unlicensed) with a gross internal area equal to or greater than five thousand square feet (5,000 sq.ft) and/or off-licence of any size. This covenant shall be effective for 15 (fifteen) years from the date of the Agreement for Lease and the vendor covenants to consent to the registration of the above covenant in the Registry of Deeds or Land Registry as appropriate on the lease completion date. This covenant on the retained lands is strictly personal to Lidl Ireland GMBH and shall not apply to any successors in title or assigns. At any time during the 15 year restriction period the purchaser, at its discretion, can agree to waive this covenant.

19. That the proposed purchaser and its contractor and professional team shall be permitted to enter onto the property under a licence agreement ("**Licence**"), on standard terms to be agreed, for the purposes of carrying out the development after planning permission issues for the development in accordance with the terms of the Agreement for Lease.
20. That the Licence and Agreement for Lease shall not be assignable by either party save, if applicable, in the case of a financial institution which has entered into a mortgage with the proposed purchaser. The mortgage must be approved by the vendor in writing and must have been entered into specifically for the purposes of financing the proposed purchaser to undertake the development of the property.
21. That the Ballymun Town Centre Facilities Charge shall apply to the property. The Ballymun Town Centre Facilities Charge means a contribution to the cost to DCC of providing the Ballymun Town Centre Facilities which the proposed purchaser, as lessee, shall pay the vendor, if demanded, under the Lease. It is a yearly sum of €2.69 per square metre of the gross floor area of the buildings from time to time erected on the site; calculated, in the first instance (but subject to revision thereafter under the terms of the Lease), upon the practical completion of the development in accordance with the SCS Code of Measuring Practice, such contribution to be CPI linked as provided in the Lease. Further information is not currently available however additional information shall be provided when agreements issue to the proposed purchaser so that the proposed purchaser has an opportunity to satisfy itself as to the basis of the charge and so that terms can be agreed and finalised between the parties.
22. That each party shall be responsible for their own costs and fees in this matter.
23. That this proposed disposal is subject to the necessary consents and approvals being obtained from the vendor, and at all times subject to the conditions as set out in this proposal.
24. That no agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place. Nothing in this proposal forms part or all of any contract and no contract shall exist or deem to exist until formal binding documentation in writing has been approved by the Solicitors for the vendor and the purchaser and the Board and contracts completed and exchanged.
25. That the dates for the performance of any of the requirements of the proposed agreement may be extended at the absolute discretion of the Assistant Chief Executive but any extension must also be first agreed with the proposed purchaser.

The disposal shall be subject to such conditions as to title to be furnished as the Law Agent in his discretion shall stipulate.

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

Declan Wallace
Assistant Chief Executive



BALCOURIS ROAD, MAIN STREET, BALLYMUN, DUBLIN 11 - Site at

Map for Area Committee



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

An Roinn Comhshaoil agus Iompair
Rannán Suirbhéireachta agus Léarscáilithe
Environment and Transportation Department
Survey and Mapping Division

O.S REF
3131-10

SCALE
1-2000

| FILE NO | INDEX No | FOLDER No | CODE | DWG No | REV |
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| SM-2016-0494- <u>0204</u> -C3-001-A.dgn | | | | | |

DATE
1-11-2016

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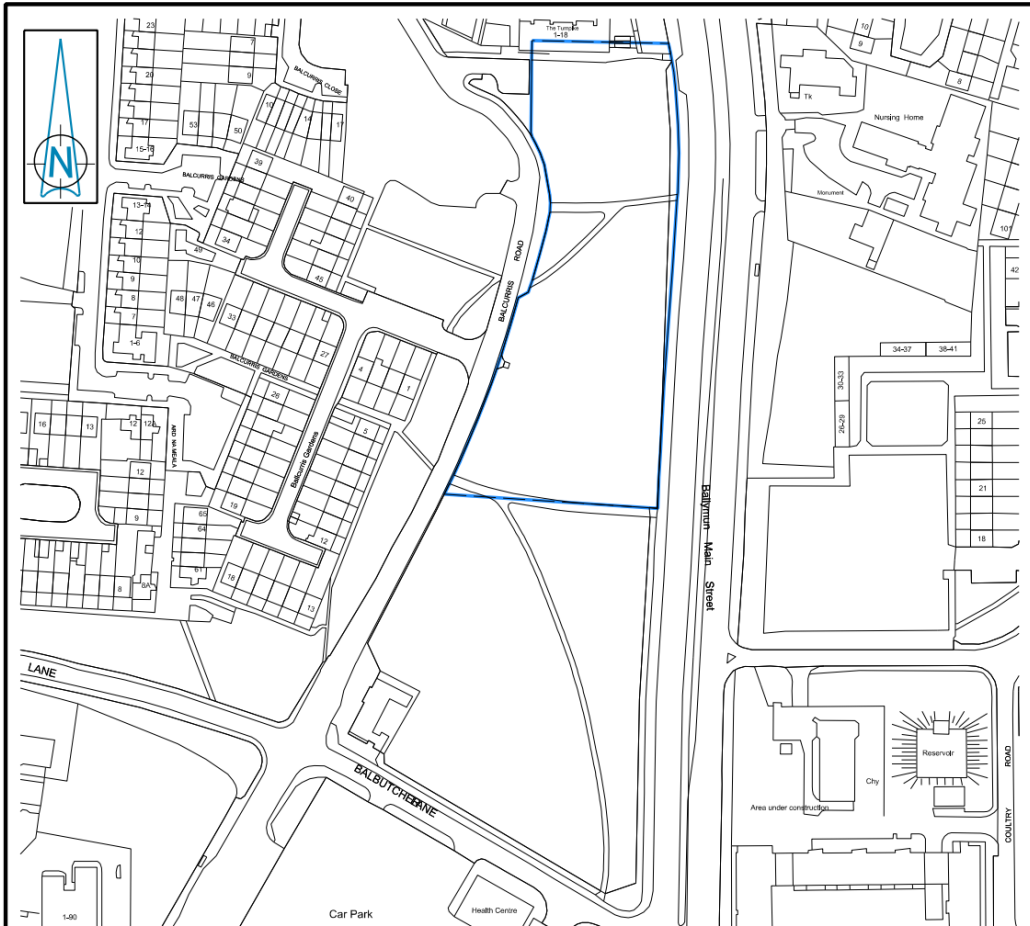
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SM-2016-0494

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BALCURRIS ROAD, MAIN STREET, BALLYMUN, DUBLIN 11 - Site at
 Map for information purposes only

Note: retained lands shown delineated in blue



Comhairle Cathrach
 Bhaile Átha Cliath
 Dublin City Council

An Roinn Comhshaoil agus Iompair
 Rannán Suirbhéireachta agus Léarscáilithe
 Environment and Transportation Department
 Survey and Mapping Division

O.S REF
 3131-9,10

SCALE
 1-2000

FILE NO SM-2016-0632-_0204- C4 - 001 - A.dgn

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DATE
 21-12-2016

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INDEX No.

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SM-2016-0632

Boundary as per Clarman dwg. no 10-01 map 2 (retained lands)