



With reference to the disposal of the Council's fee simple interest in a ground floor Retail Unit at No. 7 Bow Lane West (formerly part of 6 Bow Lane West), Kilmainham, Dublin 8 and adjoining plot of ground.

In the late 1980s a site at Bow Lane/Kennedy Villas, Dublin 8 was disposed of by Dublin City Council to Whitebourne Construction Limited. As part of the transaction Whitebourne Construction Limited constructed six units of accommodation for Dublin City Council known as Nos. 1 – 6 Bow Lane West. While Nos. 1 – 5 were residential accommodation units only, No. 6 comprised a ground floor Retail Unit, a first floor apartment and adjoining plot of ground.

By way of Indenture of Lease dated 21st August 1997 No. 6 Bow Lane West, Kilmainham, Dublin 8 the area of which is more particularly delineated on Map Index No. 4414-6 was demised by Dublin City Council to Christopher Cunningham for a term of 35 years from 5th July 1995 and subject to an annual rent of £520 (€660.26).

The lessee, Mr. Cunningham died in 2005 and by Deed of Assent made 5th May 2006 the lease passed to Patricia Keane. In 2007 Ms. Keane sought to surrender her interest back to Dublin City Council citing ill health and failure to find another party to accept an assignment as the reasons for doing so. Dublin City Council was amenable to this request and Order of the Assistant City Manager D323 dated 9th July 2008 approved terms and conditions for the surrender of the premises with effect from 11th July 2008.

On surrender of the premises the vacant first floor apartment was transferred to the Housing Department for inclusion in its social housing stock and it is now a Council tenancy.

The retail unit remained vacant and in 2010 a decision was made to place it and the adjoining plot on the market.

As the configuration of the unit then comprised a self-contained ground floor retail unit with separate street access but which was also materially attached to a social housing residential complex, the Law Agent advised that any disposal should be by means of a 20-year lease rather than outright disposal in fee simple. In addition, the adjoining plot contained a drainage pipe near its western boundary which would require a wayleave for future access and it was also considered not to have any development potential at that time.

The level of interest in the retail unit was low due to its location and site dimensions and it was not until 2012 that the Chief Valuer was in a position to report that terms and conditions had been agreed with a potential purchaser, Val Rutledge.

Following the assent of the City Council to the disposal at its meeting held on 11th June 2012 (Council Report 151/2012 refers), Order of the Assistant City Manager D196 dated 14th June 2012 approved terms and conditions for the grant of a 20-year lease of the retail unit, now numbered No. 7 Bow Lane West and adjoining plot, as shown on Map Index No. SM-2010-0621(2), to Val Rutledge at an annual rent of €10,000 payable quarterly in advance.

The approved terms and conditions provided that *“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)”* and a side letter to this effect was provided to the purchaser’s Solicitors.

In 2013 Solicitors acting for the purchaser notified the Council that he wished to complete the transaction in the name of Chocolate Factory Arts Centre Limited. Order of the Acting Assistant City Manager D216 dated 14th June 2013 approved the grant of lease be completed in this name together with provision for a wayleave for the drainage pipe which had been omitted from the original terms and conditions. These changes were assented to by the City Council at its meeting held on 10th June 2013.

The Chocolate Factory Arts Centre Limited was registered with the Company Registration Office on 16th March 2012 with its registered address at 26 Kings Inn Street, Dublin 1 where it was founded and operates as a mixed-use arts and workspace location for small businesses and creative enterprises. It also operates from other locations in Drumcondra and Santry.

On completion of the legal formalities the retail unit and adjoining plot of ground at No. 7 Bow Lane West, Kilmainham, Dublin 8, as shown on Map Index No. SM-2010-0621(2) was demised by Dublin City Council by way of Indenture of Lease dated 17th December 2014 to the Chocolate Factory Arts Centre Limited for a period of 20 years from 17th December 2014 subject to an annual rent of €10,000 payable quarterly in advance.

As previously advised the lessee had an option after 1 year of the lease had elapsed to, within a further year, acquire a 250-year lease for the sum of €75,000 (seventy five thousand euro) plus VAT (if applicable) and by letter from its solicitors dated 20th May 2016 the Chocolate Factory Arts Centre Limited notified Dublin City Council of its intention to exercise this option within the specified timescale.

In 2016 the Lessee obtained planning permission (Ref. 3006/16 refers) to develop a commercial building comprising a café and a six bedroom Bed & Breakfast over three floors on part of the adjoining plot included in the lease. As the construction of such a 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 had the authority to seek to revise the terms of the lease dated 17th December 2014 – specifically with regard to the disposal price for the 250 year lease interest.

The Law Agent’s advice was that Dublin City Council did not have the authority to seek to revise the terms and conditions and it was decided to seek forfeiture of the lease on the grounds of breaches of covenants in the lease relating to permitted use and failure to give notice of the intention to apply for planning permission. Notices of Re-Entry/Forfeiture were served on the lessee 18th November 2016.

In response, solicitors for the Chocolate Factory Arts Centre Ltd. initiated High Court proceedings against the Council for specific performance and these proceedings are still in being.

A Senior Counsel was engaged by the Law Agent to advise on what was then a complex legal matter. The advice received was that it was unlikely that the Council would be successful in Court seeking forfeiture and in order to avoid potentially protracted litigation with consequent high costs and with no guarantee of a positive outcome for Dublin City Council the Senior Council entered into direct negotiations with his counterpart acting for the lessee.

Arising from these negotiations the Senior Counsel 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. SM2018-0655.
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.

The agreement originally reached by the Chief Valuer was the grant of a 250-year lease at a purchase price of €75,000 and it is the opinion of the Law Agent that the disposal of a freehold for the sum of €130,000 represents good value on the basis that a 250-year lease is a freehold equivalent interest and not very different from full freehold.

The land to be disposed of is part of the City Estate.

The proposed 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 intended to be created until an exchange of contracts has taken place.

This proposal was approved by the South Central Area Committee at its meeting on the 21st November 2018.

This report is submitted in accordance with the requirement of Section 183 of the Local Government Act 2001.

Resolution:

“That Dublin City Council notes the contents of Report No. 97/2019 and assents to the proposal outlined therein.

Dated 21st day of February 2019.

Paul Clegg
Executive Officer

