



With reference to the proposed grant of leases in respect of a plot of land between 63 and 69 Sundrive Road, Crumlin, Dublin 12,

The Council holds the freehold title to a plot of ground between No. 63 and 69 Sundrive Road, Dublin 12 which has lain unused for many years. In the early 2000's consideration was given to placing the plot on the market but this did not proceed when a survey identified running underneath the centre of the site a 225mm combined private drain which was not owned or maintained by the Council.

The possibility of diverting the drain was examined in 2005 by the Council's Drainage Division but this was not considered feasible on the grounds of cost and potential legal difficulties in securing the necessary agreement of the owners of all sixteen properties connected to the drain.

At this time Solicitors acting for the then owner of No. 69 Sundrive Road, Mrs. Bridget Cunningham, claimed that their client was in possession of the plot on foot of an agreement made a number of years previously with the Council. No record of such an agreement could be found but the Law Agent advised that in his opinion the claimant would have a sound basis for an adverse possession claim. Following negotiations between the parties occupation of the plot was regularised by means of a Temporary Convenience Letting granted to Mrs. Cunningham for a period of ten years from 3rd October 2007.

Mrs. Cunningham died in 2013 and the new owners of No. 69 Sundrive Road, Mark Mellotte and Claire Deasy applied for a similar letting of the plot as held by Mrs. Cunningham.

At its meeting held on 7th December 2015 the City Council assented to the grant of a Temporary Convenience Letting of the entire plot of ground to Mark Mellotte and Claire Deasy, for a period of 10 years at an annual rent of €100 (Report 378/2015 refers). The terms of the Temporary Convenience Letting restricted the use of the plot of ground to gardening purposes and prohibited the erection of any structure thereon.

The house adjoining the plot on the other side, No. 63 Sundrive Road, changed hands last year and the new owner, Michael O'Connor entered into discussions with his neighbours Mark Mellotte and Claire Deasy in relation to his wish to use part of the plot held by them under the Temporary Convenience Letting as a means of access to the rear of No. 63.

The parties advised Dublin City Council that as part of a proposed agreement between them, Mark Mellotte and Claire Deasy would be prepared to surrender the Temporary Convenience Letting to Dublin City Council and that the parties would jointly apply to Dublin City Council for separate leases of those portions of the plot adjoining their properties.

In examining this application the possibility of the Council using the site for social housing was considered but it was felt that the previously stated reservations on the feasibility of diverting the drain pipe remain relevant and in particular the strong likelihood of difficulties in securing

the written consent of the sixteen households to the diversion. The matter would be complicated further by the fact that it would now be necessary for the work to be carried out by Irish Water rather than the Council.

It is proposed therefore to proceed with the grant of leases to the applicants subject to the following terms and conditions which the Chief Valuer had reported that he has reached agreement on:

A: Site adjoining No. 69 Sundrive Road, Dublin 12. Applicants: Mark Mellotte and Claire Deasy

1. That the subject property comprises a plot of land which is shown outlined in red on the attached map Index No. *SM-2019-0071 Rev B*.
2. That the Lessee occupies the subject property under the 10 (ten) year Temporary Convenience Letting agreement from 29th January 2016 and shall surrender the subject property back to the Council before entering into this new lease agreement.
3. That the lease shall be for a term of 19 (nineteen) years commencing as soon as practically possible in 2019.
4. That the market rental value is a sum of €3,800 (three thousand and eight hundred euro), plus VAT if applicable, per annum.
5. That the subject property shall be used for gardening purposes only.
6. That rent shall be the nominal sum of €100 (one hundred euro), plus VAT if applicable, per annum subject to compliance with term No. 5.
7. That at the end of every 5th year the market rent value shall be reviewed to open market rental value and the nominal rent shall be reviewed by reference to variations in the Consumer Price Index.
8. A wayleave shall be retained over the area shown coloured in yellow on the attached map Index No. *SM-2019-0071 Rev B* to service the existing underground drain. That Irish Water shall have the right to access the subject property at any time for the purposes of maintaining the drain, subject to 24 hour notice except in case of emergency. Irish Water shall use its best endeavours to reinstate the area to the satisfaction of the Lessee.
9. That the wayleave area shall continue in use for gardening purposes however there shall be no buildings/structures and tree/shrub planting in the wayleave area.
10. That the Lessee shall be prohibited from erecting any mast, hoarding or signage on the site.
11. That the Lessee shall not erect any structures or buildings with the exception of a temporary shed/container for gardening purpose use only but such a structure or building must not be erected on the area of wayleave.
12. That the Lessee shall build and maintain at their own expense and to the satisfaction of the Council a boundary wall/fence facing Sundrive Road shown hatched in blue on Map Index No. *SM-2019-0071 Rev B* which said boundary wall/fence shall include an access gate/door to allow access for the purpose of drain maintenance.
13. That the Lessee shall not assign, sublet or part with possession of the property or part thereof without first obtaining the written consent from the Council.
14. That the Lessee shall maintain the leased area to a high standard, keep it tidy and free from contamination and shall seek to avoid any nuisance, noise or disturbance to adjoining occupiers during the term.
15. That the Lessee or their successors in the title shall not be permitted to include the subject property in any application for planning permission.
16. That the Lessee shall indemnify and save harmless the Council from and against all actions, claims and demands in connection with its occupation of the plot of ground and shall obtain sufficient Public Liability Insurance cover.
17. That the Lessee shall be responsible for any utilities, security, maintenance, taxes, rates and other outgoings assessed on the subject property during the term.

18. That upon expiry of the lease, the Lessee shall at their own expense remove all materials not belonging to Dublin City Council and shall leave the subject property clean and cleared to the satisfaction of the Lessor.
19. That the Lessee shall sign a Deed of Renunciation.
20. That in the event of the Lessee failing to comply with any of the terms and conditions herein contained, Dublin City Council may revoke the lease by giving the Lessee four weeks' notice in writing.
21. That the lease shall be subject to any other terms and conditions as deemed appropriate by Dublin City Council's Law Agent.
22. That the each party shall be responsible for their own fees and costs in this matter.
23. That the Lessee shall be responsible for the payment of any Stamp Duty and VAT liability that may arise on the creation of this lease.

B: Site adjoining No. 63 Sundrive Road, Dublin 12. Applicant: Michael O'Connor

1. That the subject property comprises a plot of land which is shown outlined in red on the attached map Index No. *SM-2019-0070 Rev B*.
2. That the lease shall be for a term of 19 (nineteen) years commencing as soon as practically possible in 2019.
3. That the market rental value is a sum of €1,300 (one thousand and three hundred euro), plus VAT if applicable, per annum.
4. That the subject property shall be used for gardening purposes only.
5. That rent shall be the nominal sum of €100 (one hundred euro), plus VAT if applicable, per annum subject to compliance with term No. 4.
6. That at the end of every 5th year the market rent value shall be reviewed to open market rental value and the nominal rent shall be reviewed by reference to variations in the Consumer Price Index.
7. That the Lessee shall build and maintain a boundary post and panel fence between numbers 63 and 69 Sundrive Road (shown hatched in blue on the attached map Index No. *SM-2019-0070 Rev B*) at his own expense and to the satisfaction of the Council. The location of the fence has been agreed with Mark Mellotte and Claire Davis.
8. That the Lessee shall not assign, sublet or part with possession of the property or part thereof without first obtaining the written consent from the Council.
9. That the Lessee shall be prohibited from erecting any mast, hoarding or signage on the site.
10. That the Lessee shall not erect any structure or building on site (save for the boundary fence at term no. 7 above).
11. That the Lessee or their successors in the title shall not be permitted to include the subject property in any planning application for planning permission.
12. That the Lessee shall maintain the leased area to a high standard, keep it tidy and free from contamination and shall seek to avoid any nuisance, noise or disturbance to adjoining occupiers during the term.
13. That the Lessee shall indemnify and save harmless the Council from and against all actions, claims and demands in connection with its occupation of the plot of ground and shall obtain sufficient Public Liability Insurance cover.
14. That the Lessee shall be responsible for any utilities, security, maintenance, taxes, rates and other outgoings assessed on the subject property during the term.
15. That upon expiry of the lease, the Lessee shall at their own expense remove all materials not belonging to Dublin City Council and shall leave the subject property clean and cleared to the satisfaction of the Lessor.
16. That the Lessee shall sign a Deed of Renunciation.
17. That in the event of the Lessee failing to comply with any of the terms and conditions herein contained, Dublin City Council may revoke the lease by giving the Lessee four weeks' notice in writing.
18. That the lease shall be subject to any other terms and conditions as deemed appropriate by Dublin City Council's Law Agent.

19. That the each party shall be responsible for their own fees and costs in this matter.
20. That the Lessee shall be responsible for the payment of any Stamp Duty and VAT liability that may arise on the creation of this lease.

This property was acquired in fee simple from the Earl of Meath under the Rutland Avenue CPO 1938.

This proposal was approved by the South East Area Committee at its meeting on 11th November 2019.

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

The dates for the performances of any of the requirements of the proposed agreement may be amended at the absolute discretion of the Executive Manager.

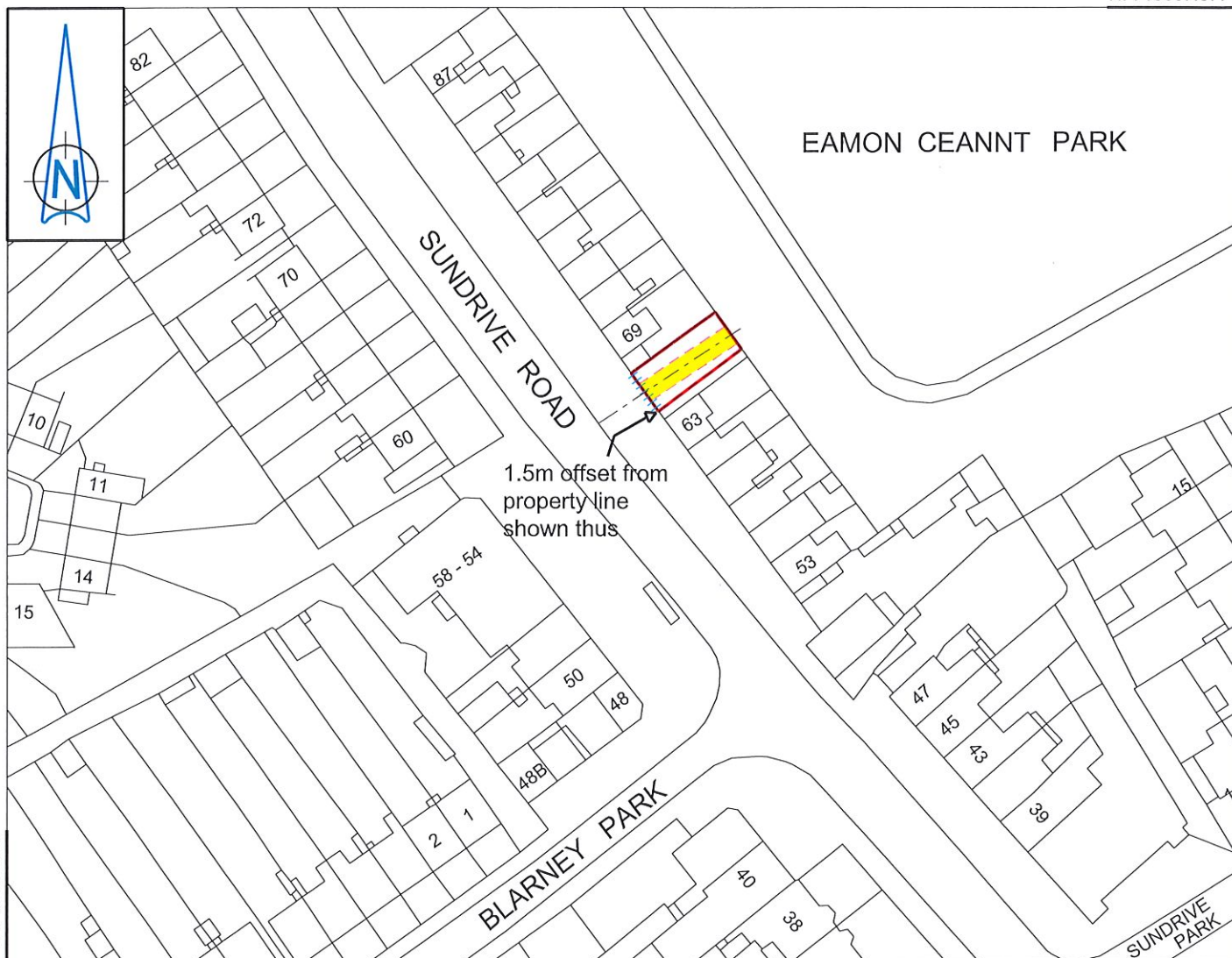
The disposal shall be subject to any such covenants and conditions as the Law Agent in his discretion shall stipulate.

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

Resolution to be adopted

"That Dublin City Council notes the contents of Report No. 362/2019 and assents to the proposal outlined therein".

Paul Clegg
A/Assistant Chief Executive
18th November 2019



N: 731392.300

Sundrive Road - Lands adjoining 63 & 69

Dublin City Council to Mark Mellotte & Claire Deasy

Boundary fence to be built by lessee shown thus |||||

110 M²



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

3328-03

SCALE

1:1000

DATE

17-04-2019

SURVEYED / PRODUCED BY

A-M Murphy

Dr JOHN W. FLANAGAN

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CITY ENGINEER

INDEX No

FOLDER No

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FILE NO

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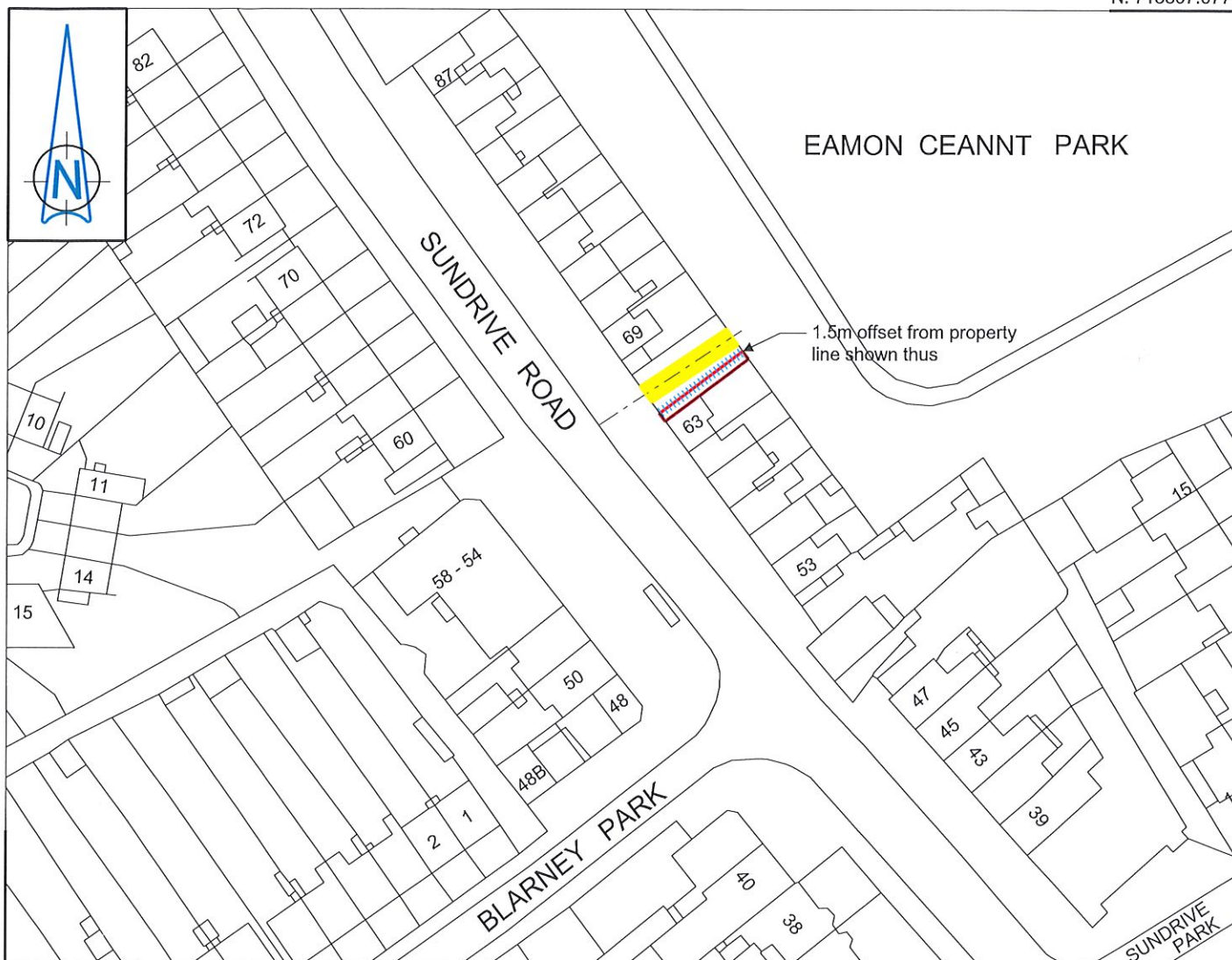
APPROVED

THOMAS CURRAN

ACTING MANAGER LAND SURVEYING & MAPPING
DUBLIN CITY COUNCIL

INDEX No.

SM-2019-0071 Rev B



N: 731392.300

Sundrive Road - Lands adjoining 63

Dublin City Council to Michael O' Connor

Boundary fence to be built by Lessee shown thus |||||

24 SqM



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Environment and Transportation Department
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DATE

12-04-2019

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A-M Murphy

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ACTING MANAGER LAND SURVEYING & MAPPING
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Dr JOHN W. FLANAGAN

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CITY ENGINEER