**COMHAIRLE CONTAE ÁTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL**

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 11/06/2018**

**H-I 8 (a)**

**LD 2/S/2 Proposed disposal of lands at Belgard Square West Road, Tallaght to James Cummins and Michael Hayden.**

In May 1999 High Court proceedings were initiated by Primo Oil Company Limited (James Cummins and Michael Hayden being the Leaseholders of the service station) against South Dublin County Council to halt work on the Cookstown-Old Bawn distributor Roads Stage II. In an effort to avoid delay in the completion of the road scheme negotiations commenced between the parties.

Agreement was reached between the parties for withdrawal of the High Court proceedings in exchange for lands that would be surplus to Road requirements following completion of the scheme.

Managers Order LA/205/2000 dated 29th September 2000 recommended the disposal of lands subject to certain terms and conditions to James Cummins and Michael Hayden by way of (1) A 99 year lease for a plot of land comprising of 1,042 sq. metres and (2) A licence for a term of 4 years and nine months for a plot of land comprising of 502 sq. metres (the Luas Reservation). The disposal of the lands was noted at the meeting of the Council held on the 9th October, 2000, and 13th November, 2000 Minute Nos. C/401/00 and C/446/00 refer.

James Cummins and Michael Hayden initiated High Court Proceedings against the Council seeking specific performance of the agreement between the Council and themselves. In the judgement delivered on 27th November 2007 Mr Justice Laffoy found against the Council.

On review of the judgement delivered the Law Agent has found that the Licence of the 502 sq. metres known as the Luas Reservation and the disposal of this site being no longer required for development of the Luas Route should be disposed of to Mr Cummins and Mr Hayden to comply with specific performance of agreement that was found to exist between the parties in the Court judgement delivered.

Accordingly, and in order to comply with the High Court Judgement delivered, I now recommend that the Council dispose of lands at Belgard Square West Road, Tallaght, Dublin 24 to Michael Cummins and James Hayden in accordance with Section 211 of the Planning and Development Act, 2000 and subject to the provisions of Section 183 of the Local Government Act, 2001 to include the following terms and conditions:-

1. That the applicant will be granted a lease, for the area coloured pink on drawing LR/16/12, for a term of 99 years, subject to a consideration of €50,000 (fifty thousand euro), and a nominal rent of €100 (one hundred euro per annum).
2. That the lease shall incorporate five yearly rent reviews from the commencement date and the rent shall be reviewed on the basis of the CPI.
3. That the site shall be cleared and levelled and surfaced by the lessee and integrated with the adjoining property held by the lessee, subject to the necessary planning permission (if required) and maintained in a neat and tidy condition or otherwise used in accordance with the terms and conditions of any planning permission received.
4. That the lessee shall be liable for all charges, rates, taxes, repairs and insurances arising in respect of the site.
5. That the lessee shall not assign, sublet or part with possession of the property or any part thereof without the prior consent of the Council, which shall not be reasonably withheld.
6. That the lessee shall indemnify the Council against all claims as a result of their use of the demised area and shall arrange for insurance cover as follows: Public Liability Insurance (minimum €6.5million) and Employers Liability insurance (minimum of €13 million).
7. That the lessee shall be responsible for repairing and maintaining the property including all boundaries in good and substantial repair.
8. That the Lessee will not allow any encroachment to be made or easement to be acquired over the demised premises.
9. The lessee shall also be liable for any VAT arising in this transaction whether on the granting of the lease or on the lease rent.
10. That this proposal is subject to any required wayleaves across the site. The Council shall be entitled to enhance, replace or duplicate any of its pipelines across the site (if such exist) for no consideration but subject to suitable reinstatement of any area affected.
11. That each party be responsible for their own costs.
12. That each party shall use their best endeavours to complete the transaction within 6 months of adoption of the disposal resolution.
13. That the Law Agent shall draft the necessary legal agreements and shall include any further terms deemed appropriate in Agreements of this nature.
14. That no contract enforceable at Law is created or intended to be created until such time as contracts have been exchanged.
15. That the disposal is subject to the necessary approvals and consents being obtained.

The lands being disposed of form part of the lands acquired in 1967 from Walkinstown Estates Limited for housing purposes.

D. McLoughlin

Chief Executive