

COMHAIRLE CONTAE ÁTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL



MEETING OF SOUTH DUBLIN COUNTY COUNCIL

Monday, 13th September 2021

H-I 7 (A)

Proposed disposal of lands at Killinarden, Tallaght, Dublin 24 to The Arden Team DAC, Wilton Works, Naas Road, Dublin 22, for development comprising new residential homes, community/sporting and creche facilities, open space, infrastructure and services.

In October 2018, at a Special Meeting of the Council on Housing Matters, the Elected Members noted a report outlining the proposal to progress a masterplan on a site at Killinarden, Dublin 24. A masterplan for the site was subsequently developed and presented to the Council meeting on 9th March 2020, at which the Elected Members agreed:

- to commence a competitive procurement process to appoint joint venture partner to bring the outline masterplan to planning stage, and
- to proceed to land disposal (s.183) following the procurement process.

On the 6th July 2020, SDCC sought expressions of interest to develop the 15.7 hectares site at Killinarden, Dublin 24 in accordance with the masterplan. The masterplan site has an area of 30.5 hectares and incorporates the 15.7 hectares of the site for residential development, creche and associated open spaces. The location of the community centre is within the Masterplan site, but not included in the development site.

The successful economic operator would be responsible for the delivery of infrastructure enabling works required for the development which include the following -

- Main Avenue to serve the proposed new residential area, linking from the N81 to Killinarden Heights Ring Road, to include two signalised junctions and nine priority junctions.
- The provision of a wetland green infrastructure area to the south of the Development site.
- The provision of underground foul and surface water drainage.
- The provision of a new public open space to OS zoned lands to the east; and
- All other standard infrastructural provision to site including drainage, roadworks, associate site clearance works.

The required housing tenure mix for the site is 60% affordable purchase housing, 20% social housing, to be sold by the economic operator to SDCC and 20% private.

The whole process from commencement of the masterplan to recommending award of tender including complex technical and legal development has taken approximately three years.

It is proposed to enter into a legal agreement with the preferred Economic Operator to develop the site and to construct the housing units, community, and sporting facility, creche, park and associated enabling works in accordance with the objectives of the masterplan and in accordance with the plans.

Accordingly, I recommend that the Council dispose of lands on which affordable purchase units and private residential units will be built within the development site at Killinarden, Tallaght, Dublin 24 to The Arden Team DAC, Wilton Works, Naas Road, Dublin 22 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 as follows:

1.
 - i. SDCC is the freehold owner of the 30.5-hectare master-planned development site at Killinarden which includes a residential development site which is approximately 15.7 hectares. The Arden Team DAC will be responsible for development of the site. The Council will issue licences subject to planning permission to the Arden Team DAC to allow access and development of the master-planned site including compound licence(s) if required. In addition, should the Economic Operator require access to the development site to support the preparation of a planning application SDCC will permit access to the site by way of temporary licence(s) A development agreement will be entered into by both parties for the development of the site. The draft terms and conditions of the development agreement have been shared with the Arden Team DAC. The development of the site will include development of all infrastructure enabling works as documented in the form of tender issued by SDCC and also provision of a creche and a community and sports facility, which is to be located outside the residential development area but within the masterplan for the area. Title to the affordable purchase and private residential units along with the associated common areas within the residential development area of the masterplan site will transfer from SDCC upon completion of the units or phases of the development and subject to the Economic Operator having made all payments required as set out in term number 2. Title to the social units will not be transferred to economic operator, the land and units will remain in the ownership of the Council.
 - ii. That the lands being disposed will comprise of approximately 372 affordable purchase units, 123 private units and associated common areas. The precise numbers and boundaries have yet to be established, however the approximate area of the land is 7.06 hectares or thereabouts (+ or - 10%) and will be confirmed once planning permission for the development site has been achieved. In addition, a formal land registry compliant map shall be prepared by the Council for inclusion with the legal documents and furnished to the economic operator for inclusion with the legal documents but in the interim a draft plan for identification purposes drawing named "KMP1" is annexed showing the development site outlined in red with proposed affordable and private units for disposal shaded brown and blue.

2. That the consideration due to SDCC by The Arden Team DAC (the Economic Operator) is €14,000,000 payable as follows: -
- (a) €500,000 within six weeks of the Council approving a Section 183 of the Local Government Act. Such amount to be refunded in the event that the development proposed for the site does not receive full planning permission, and/or in the event of any of the terms and conditions of the disposal not having been satisfied.
 - (b) 5% (€700,000) of the Economic Operator's Consideration within 10 working days of the date of the grant of planning permission.
 - (c) 10% (€1,400,000) of the Economic Operator's Consideration, on the execution of the Development Agreement.
 - (d) 5% (€700,000) of the Economic Operator's Consideration, not later than one Working Day before the date on which the Economic Operator is to be permitted to enter onto part of the development site for the purposes of commencing the development.
 - (e) 26.6% of the Developer's Consideration (€3,724,000) on the date which is the earlier of eighteen months from the date on which the Developer is permitted to enter onto the Development Site for the purposes of commencing the Development or the date of Practical Completion of the third tranche of Social Units in accordance with the Developer's Timetable and the Phasing Map.
 - (f) 26.6% of the Developer's Consideration (€3,724,000) on the date which is the earlier of the 12-month anniversary of the due date for payment of the Developer's Consideration referred to at D above or the date of Practical Completion of the fifth tranche of Social Units in accordance with the Developer's Timetable and the Phasing Map.
 - (g) The balance (€3,252,000) of the Economic Operator's consideration on the date which is the earlier of the twenty-four-month anniversary of the due date for payment of the Developer's Consideration from the date the Developer was permitted to enter the site or the date of Practical Completion of the seventh tranche of Social Units in accordance with the Developer's Timetable and the Phasing Map; The entire of the Developer's Consideration shall be due and payable before the expiration of four years and ten months from the date of the Development Agreement.
 - (h) If planning permission when granted requires a greater or lesser number of social/affordable purchase or private units to be built than as set out in these heads of terms, the heads of terms may be varied to either increase or decrease the number of affordable purchase units and private units being disposed of as required by the planning permission with the consideration due by SDCC/the Economic Operator also may being varied as set out in the draft development agreement provided to the Economic Operator.

3. That the economic operator and SDCC shall use all reasonable endeavours to obtain planning permission pursuant to the provisions of the Planning & Development (Strategic Housing Development) Regulations 2017 (or other applicable regulations under the Planning and Development Act 2000, as amended) as soon as practicable but within eighteen months of the heads of terms being agreed. Should the aforementioned planning scheme be replaced or amended the developer in discussions with SDCC will utilise the most appropriate and efficient planning mechanism to obtain planning permission for development of the site.
4. The Economic Operator shall prepare a draft Environmental Impact Statement (EIS) for the Development and shall submit the draft EIS to SDCC for approval within two months of the signing of the development agreement. Not later than 10 Working Days after SDCC receives the draft EIS, SDCC shall notify the Economic Operator in writing whether it approves the draft EIS. SDCC shall give reasons if it does not approve the draft EIS. If SDCC requires modification of the draft EIS or seeks to impose conditions on its approval or rejects the draft EIS, it shall set out its reasons in writing and shall in good faith endeavour to agree any changes or alterations it believes are required with the Economic Operator. If SDCC does not approve the draft EIS, the Economic Operator shall submit a revised draft EIS to SDCC for approval.

The Economic Operator in accordance with the timetable submitted in their tender response shall prepare the draft Planning Application considering the masterplan and the preliminary planning reports for the development site and SDCC's Development Plan 2016-2022 and shall submit it to SDCC for approval within four months after the date of the signing of the development agreement (or within such later period as SDCC may, at its discretion, agree).

5. Not later than one month after SDCC receives the draft Planning Application, SDCC shall notify the Economic Operator in writing whether it approves the draft Planning Application (such approval not to be unreasonably withheld or delayed). SDCC shall give reasons if it does not approve the draft Planning Application. If SDCC requires modification of the draft Planning Application or seeks to impose conditions on their approval or rejects the draft Planning Application, it shall set out its reasons in writing and shall in good faith endeavour to agree any changes or alterations it believes are required by the Economic Operator.
6. For the purposes of complying with the requirements of the Planning & Development (Strategic Housing Development) Regulations 2017, the Economic Operator shall, while it is preparing the draft Planning Application for submission to SDCC also consult with An Bord Pleanála, and shall deliver to SDCC, with the draft Planning Application, the Opinion issued by An Bord Pleanála confirming its view that the Planning Application constitutes a reasonable basis for an application pursuant to the Planning & Development (Strategic Housing Development) Regulations 2017 and that no further consideration or amendment to the draft Planning Application is required.
7. Within seven Working Days after receiving written approval to the Planning Application from SDCC, the Economic Operator shall submit the Planning Application to An Bord Pleanála in accordance with the requirements of the Planning & Development (Strategic Housing Development) Regulations 2017 and shall use all reasonable endeavours to obtain the Planning Permission as soon as practicable.
8. The Economic Operator shall pay all appropriate fees in respect of the Planning Application and shall thereafter take all reasonable steps to obtain the Planning Permission, including dealing in a timely manner with any requests from An Bord Pleanála in connection with the Planning Application.

9. On or before the fifth Working Day after the day on which the Economic Operator shall receive formal written notice from An Bord Pleanála of the decision to grant or to refuse planning permission on foot of the Planning Application (the "Decision") the Economic Operator shall deliver a copy of the Decision to SDCC.
10. Once planning permission has been obtained, SDCC shall permit the Economic Operator to enter on to the Development Site, in Phases and Economic Operator's Timetable below, on foot of licences (the "Licence(s)") for each Phase, each such licence to be provided by SDCC for a period of 9 months from the date of the grant of Planning Permission to enable the Economic Operator to carry out the Development in accordance with the Plans, the Economic Operator's Timetable, and the Planning Permission. The programme for the phased delivery is four years following planning permission as set out below. These dates are as per the tender submission and are indicative based on the current SHD process

Phase	No. of Units	Start	Finish
Phase 1.	278	Q3 2022	Q4 2024
Phase 2.	217	Q3 2023	Q3 2025
Phase 3.	125	Q3 2024	Q3 2026

The tender programme shows that the first social units in Phase 1 are to be delivered 2 months after the first private and affordable purchase units. The tenure mixes are then being delivered together throughout Phase 1.

For Phase 2 all tenure mixes will commence delivery together, with the social units complete 4 months ahead of the final affordable purchase and private units.

For Phase 3 the first social units will be delivered a month after the first affordable purchase and private units, with all the social units being delivered 3 months ahead of the final affordable and private units.

11. The License or Licences (as appropriate) will be renewed by SDCC for further 3-month periods (or such other period to be determined by SDCC) provided the Economic Operator is in compliance with all its obligations contained herein.
12. Unless otherwise agreed by SDCC, the development shall be carried out in accordance with the Phasing schedule set out above. The Economic Operator shall only be entitled to be granted a licence to commence work on a subsequent Phase if SDCC is satisfied that:
 - Not less than 50% of the Units in the Phase under construction are at eaves level or beyond.
 - Any Economic Operator's Consideration required to be paid to that date pursuant to development agreement has been paid in full.
 - The Development Bond for that subsequent Phase has been delivered to SDCC.
 - SDCC has granted a Licence to the Economic Operator for the relevant Phase; and
 - No more than two Phases may be underway in the Development at any one time.

13. If the Economic Operator proposes to commence work on a subsequent Phase, it shall notify SDCC in writing no more than ten (10) Working Days before the date of anticipated commencement of such work, identifying the subsequent Phase. SDCC's Architect shall, as soon as practicable thereafter, inspect the Units in the Phase under construction and satisfy itself that 50% or more of the Units in the Phase under construction are at eaves level or beyond. The decision of SDCC's Architect shall be final and binding in this regard.
14. If SDCC's Architect is satisfied that 50% or more of the Units in the Phase under construction are at eaves level or beyond, then, subject to compliance, the Economic Operator shall be entitled to commence work on the said subsequent Phase provided however that work on the subsequent Phase shall not progress beyond completion of ground-floor slabs, road substructures and underground pipework until all the units in the preceding Phase are roofed and fully closed-in. In this regard, SDCC shall be entitled to issue a notice requiring the Economic Operator to cease work on the subsequent Phase if it is satisfied that the Units in the preceding Phase are not all roofed and fully closed-in and/or that works in the subsequent Phase have progressed to completion of ground-floor slabs, road structures and underground pipework. If SDCC issues such a notice, the developer shall immediately cease work on the subsequent Phase until such time as SDCC notifies the Developer that the units in the preceding Phase are roofed and fully closed in.
15. The Economic Operator shall not be permitted to have access to the Development Site or any part thereof for the purposes of commencing the works in any Phase until all payments required to be paid as part of the Economic Operator's Consideration to that date pursuant to development agreement have been paid in full to SDCC and SDCC is furnished with and confirms in writing that it is satisfied it has been provided with the following documents:
- A certified copy of the executed Building Contract including all appendices thereto.
 - The Development Bond, duly executed, for the Works.
 - Certified copy appointment of the Project Supervisor Design Process.
 - Certified copy appointment of the Project Supervisor Construction Stage.
 - Certified copy appointment of the Design Certifier.
 - Certified copy appointment of the Assigned Certifier.
 - Certified copy email/s of notice/s of validation confirming submission of the commencement notice/s for the Works in accordance with the Building Control Regulations.
 - Copy Fire Safety Certificate (s) for the Works in the Phase.
 - All insurances as required pursuant to required levels as set out in the tender documents issued by SDCC.
 - The Health & Safety Plan.

- Certified copies of the Forms AF1 and AF2 duly completed and lodged with the Health and Safety Authority.
16. If the Economic Operator fails to achieve practical completion of the works by the expiration of the Term (as defined in the final Development Agreement) and written notification has been provided by SDCC Architects to the economic operator, SDCC shall be entitled to damages for non-completion at a rate of €5,000 per week or part thereof (subject to the terms of the Development Agreement).
 17. Title to the lands on which the affordable purchase and private units will be constructed in addition to the associated common areas will transfer following satisfactory compliance and completion within the phasing as set out under the Development Agreement.
 18. The book of title relating to the development and disposal lands including the file plan and folios have been shared with the Economic operator so that they are aware and accepts the burdens identified on the folios which will form part of this disposal. The Economic Operator is also aware that they shall provide for and shall accommodate all wayleaves and connections in respect of any existing services traversing the Development Site and such new connections thereto as may reasonably be required with statutory bodies and authorities.
 19. The Economic Operator will be responsible for all planning levies and contributions payable in accordance with the Council's Development Contribution Scheme made under the Planning and Development Act 2000. The contributions under the scheme are payable prior to entry on the site or as otherwise agreed by the Council. The Economic Operator must satisfy themselves as to the capacity of all services to service the proposed development.
 20. Commencement of the works (meaning site preparation and shell and core construction) shall commence within 6 months of the date of final grant of planning permission (including the expiration of any judicial review period or appeal period), or such later date as agreed in writing with SDCC.
 21. That all site investigations, groundworks, overhead cable diversions, demolitions/site clearance/septic site removal (such works are subject to regulations and to obtaining the relevant statutory licences), service connections (but excluding service connection charges for the Social Units) development and associated costs incurred in the delivery of the entire completed development shall be borne by the Economic Operator.
 22. Prior to commencement of development on the development site the Economic Operator shall at its own expense secure the development site with a fence or boundary hoarding of a specification approved in advance by SDCC.
 23. During the building period the Economic Operator will provide all reasonably required evidence of all risks, public liability and employer's liability insurance cover maintained by the economic operator (or procured by the Economic Operator) for the Construction Period (as defined in the Development Agreement). The insurance shall contain an indemnity to the principal's clause and shall also keep SDCC indemnified from and against all actions, proceedings, claims, demands, damages etc. howsoever arising.
 24. That South Dublin County Council reserves the right, only to be exercised by the Council acting reasonably, to re-enter on the site and resume possession thereof should the economic operator fail to commence and complete development of the site

within the specified period within the Development Agreement or in the event of the dissolution, bankruptcy or insolvency of the economic operator save in the case where a financial institution which has been assigned by way of security the Economic Operator's interest for the purposes of financing the development of the site and enforces its security against the site. South Dublin County Council shall provide written notice of any intent to exercise this right.

25. The Economic Operator has been advised that the sale of undeveloped sections of the Development Site to investors not forming part of the Economic Operator is not acceptable and will not be permitted.
26. A social employment clause is set out in the agreement covering the period commencing on the date of grant of planning permission up to the date of practical completion of the development.
27. That the Development Agreement is not transferrable save in the case of a financial institution of good standing which has been assigned by way of security the Economic Operator's interest in the Development Agreement for the purpose of financing the Economic Operator to undertake the development of the site.
28. That the above proposal is subject to the necessary approvals and consents being obtained in order to allow the signing of the agreement with The Arden Team DAC and in order to allow full construction activities.
29. That each party shall be responsible for their own professional (i.e., legal, engineering, architects, and other required consultants') fees in this case.
30. The Economic Operator shall pay any VAT, Stamp Duty, or taxes arising at any stage in this transaction (except where any lawful exemption or relief therefrom applies), including on the creation of a building licence (if any), or contract for sale.
31. That the Council's Solicitors shall draft the necessary legal agreements, substantially in the forms previously provided to the Economic Operator for review and may include further reasonable terms and conditions as deemed appropriate to give effect to the heads of terms set out herein, including provision for use of an independent expert(s) to settle any disputes arising, as appropriate, in order to achieve a reasonable balance in the protection of the party's interests in the matter.
32. The applicant is asked to furnish a letter from their solicitors setting out the proper name of the Economic Operator (the intended purchaser). In the event of any name change to the Economic Operator (the intended purchaser) prior to formal completion of the legal transfer, the Economic Operator must provide documentary evidence to the Council proving that the new named party is one and the same as the named Economic Operator heretofore to enable the transfer to complete.
33. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.

The lands being disposed of were acquired as follows:

- Form part of the land acquired from the Dominican Fathers in 1991 for recreation and amenity purposes.
- Form part of the land acquired from Dublin City Council (Formerly Dublin Corporation) in 1997 as part of the Scheme of Transfer of Lands pursuant to the Local Government (Dublin) Act, 1993.
- Form part of the land acquired by Kelland Homes in 2016 for future development.

D. McLoughlin
Chief Executive