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



**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 13th December 2021**

**H-I 9 (A)**

**LD 1554** **Proposed Grant of Permanent Wayleave to ESB at New Nangor Road/Rowan Walk, Kilcarbery Grange, Clondalkin, Dublin 22 to facilitate power supply to Kilcarbery Integrated Housing Development**

At the September 2018 Council Meeting, the members approved the disposal of lands at Kilcarbery, The Grange, Clondalkin, Dublin 22 to Adwood Limited for the purposes of providing an integrated housing development, subject to the provisions of Section 183 of the Local Government Act, 2001 and in accordance with Section 211 of the Planning & Development Act, 2000. Planning permission was granted in December 2019 for 1,034 units of which 310 of them are for social housing.

Works have commenced on the development and the Electricity Supply Board (ESB) have made an application for Grant of Permanent Wayleave as outlined in red on attached OS Sheet No. 3326-06 & 07 to facilitate the provision of essential power supply to the housing development.

Accordingly, I recommend that the Council grants a Permanent Wayleave over lands outlined in red on OS Sheet No. 3326-06 & 07 to Electricity Supply Board (ESB) 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 subject to the following terms and conditions:-

1. That the subject area comprises of approximately 175.89 square metres or thereabouts as outlined on the attached indicative drawing OS Sheet No. 3326-06 & 07. The specific area will be agreed between the parties and a PRA compliant drawing will then be prepared to be attached to the Wayleave Agreement
2. That the total consideration shall be the sum of €1 (one euro)plus VAT (if applicable). The consideration figure is exclusive of accommodation works, fees and reinstatement costs.
3. That South Dublin County Council holds the freehold title to the wayleave area.
4. That upon execution of the Wayleave Agreement and full payment of the consideration, the SDCC nominated Contractor Adwood (including any appointed sub-contractors, agent, or servants) shall provide fourteen days advance written notice to the Council of its intention to commence works on the wayleave area.
5. That prior to the granting of the wayleave, the SDCC nominated contractor Adwood (including any appointed sub-contractors, agent, or servant) shall agree in writing a method statement for all works with the Council
6. That the SDCC nominated contractor Adwood (including any appointed sub-contractors, agents, or servants) shall pay for and complete all landscaping and reinstatement works to the written satisfaction of the Council. Details of the reinstatement works required shall be agreed with the Council prior to the commencement of any works
7. That the SDCC nominated contractor Adwood (including any appointed sub-contractors, agent, or servant) shall carry out all works in an efficient and reasonable timeframe once entry is made on site. All works to be carried out with minimum disruption to the Council and members of the public. All works and work procedures shall comply with Health and Safety regulations
8. That the Council will not to erect or build or permit to be erected or built any building or structure on nor otherwise develop in any way whatsoever the strip of ground.
9. On completion of the works the Applicant (ESB) shall have access to the wayleave area for the purpose of inspecting, repairing, and maintaining the underground cables.  They shall provide satisfactory advance written notice to the Council of any intended works to the cables and shall complete reinstatement works to the satisfaction of Council. All works to be carried out with minimum disruption to the Council and members of the public. All works and work procedures shall comply with Health and Safety regulations.
10. That SDCC nominated contractor Adwood shall indemnify South Dublin County Council against any claim for compensation which may be made by any party arising out of works being carried out by them( or any appointed sub-contractors, agents, or servants) including reinstatement works on the subject land and any access points thereto. Evidence of Public Liability Insurance (minimum of €6.5 million) and Employers Liability Insurance (minimum of €13 million) shall be required.
11. Following completion and sign off works should the applicant (ESB) need to access the wayleave area  they will indemnify the Council under the following terms:

*“To indemnify and keep indemnified the Grantor(s) against any claims, demands, costs, expenses, damages, actions, liabilities and proceedings directly arising due to the negligence or breach of statutory duty of the Grantee by reason of the placing of the Line on the Lands resulting in injury to any person or damage to the Lands but excluding any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill or reputation and excluding any indirect or consequential loss, incidental or special damages (including punitive damages)****PROVIDED THAT****the foregoing indemnity shall not apply where and to the extent that any such injury to any person or damage to the Lands results in whole or in part from the failure by the Grantor(s) or any other person on the Lands to follow instructions provided to the Grantor(s) by the Grantee, or from the negligence, default, act, omission, or breach of duty (including breach of statutory duty) of any such persons, or of the Grantor(s), their servants, agents, invitees, licensees or employees.*“

Evidence of Public Liability Insurance (minimum of €6.5 million) and Employers Liability Insurance (minimum of €13 million) shall be required.

1. That the Council reserve the right to create other legal interests in the wayleave area, subject to them not interfering with the underground cables.
2. That the Applicant shall pay a contribution of €750 Plus VAT towards the Council’s legal fees.
3. That the Wayleave Agreement shall include other conditions, as are deemed appropriate by the Council’s Law Agent in Agreements of this nature.
4. That this proposal is subject to the necessary approvals and consents being obtained.
5. That no contract enforceable at law is created or intended to be created until such time as contracts have been exchanged.
6. That in the event of any name change to Applicant prior to formal completion of the wayleave agreement, the Applicant must provide documentary evidence to the Council proving that the new named party is one and the same as the named Applicant heretofore to enable the transaction to complete.

The lands subject to the proposed wayleave were acquired as follows:

* Form part of the land acquired from Bernard Murphy in 1990 for Housing purposes.
* Form part of the land acquired from Mary Veronica Capps in 1967 for Roads purposes.
* Form part of the land acquired by Kilcarberry Limited in 1983 for Open Space, Roads and Housing.

**Daniel McLoughlin**

**Chief Executive**