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



**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 11th July 2022**

**HI- 7 ( D)**

**LD 1547 Disposal of a site at Kilcarbery, Clondalkin, Dublin 22 to Lidl Ireland GmbH**

The Council is the freehold owner of a strategic site located at Kilcarbery, Clondalkin, Dublin 22. That the subject site is shown outlined in red on drawings LR/12/21 comprising an area of approximately 0.8 hectares/1.98 acres or thereabouts. The site was placed for open market sale with appointed selling agent, CBRE , 3rd Floor Connaught House, Burlington Road Dublin 4 .

Following an extensive marketing process, the Council Valuer in conjunction with the selling agent has reached agreement on sale terms and conditions which they consider to be fair and reasonable, and which have been accepted by the proposed purchaser.

Accordingly, I recommend that the Council disposes of the site at Kilcarbery, Clondalkin, Dublin 22 to Lidl Ireland GmbH, Head Office, Main Road, Tallaght, Dublin 24 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. A formal disposal map shall be prepared in due course by the Council for inclusion with the legal documents but in the interim a draft plan for identification purposes Drawing LR/12/21 ­­­is annexed showing the site area of approximately 0.8 hectares/1.98 acres outlined in red. The formal disposal map will be prepared by the SDCC Technical Team and to be agreed by the purchaser.
2. That the purchase price, subject to term 6 below, shall be the sum of **€3,750,000 (three million seven hundred and fifty thousand euro)** plus VAT (if applicable) , payable in the following manner:
3. 10% upon signing of the disposal contract. The Proposed Purchaser will sign and return the contract in the agreed form to the Vendor’s Solicitor within 21 working days of issue.
4. 90% upon completion of the disposal – which is conditional on receipt of satisfactory planning permission, as per term 6 below.
5. That the proposed purchaser is Lidl Ireland GmbH, and the contract cannot be assigned or transferred.
6. That the vendor is South Dublin County Council, and they will transfer the Freehold Title or equivalent with vacant possession in the subject site, subject to term No.5.
7. That the site is encumbered by the following:

a. There is a 100mm diameter PVC Watermain along northern boundary of the site and no building will be permitted within 3 metres of this infrastructure.

b. There is a 450mm diameter Surface Water Sewer along the Eastern Boundary of the Site and no building will be permitted within 3 metres of this infrastructure.

c. There is a 500mm diameter pipe running into culvert which is viewable on site with the setback to be determined.

1. That the disposal is subject to the receipt of final grant of permission for a retail store, associated retail units & car parking. The design of the scheme will be generally in accordance with the proposed purchaser’s bid dated 17th June 2022 but subject to any amendments that may be necessary following discussions with the Planning Authority.
2. That the proposed purchaser will apply for a pre planning meeting within two weeks of signing and exchanging the disposal contract. The proposed purchaser will lodge planning permission within 12 weeks of the pre planning meeting. Failure to lodge a planning application within the stated period shall render the agreement null and void.
3. That the Proposed Purchaser shall be permitted to lodge one (1) planning application to the Planning Authority and shall be entitled (without obligation) to lodge one (1) planning appeal to An Bord Pleanala, if required

The entitlement to lodge a second comprehensive planning application shall only arise if the Planning Authority refuses permission for the first application or if the proposed purchaser (acting reasonably) deems the grant of planning permission by the Planning Authority to be unacceptable and onerous. The second comprehensive planning application, if it occurs, must be lodged within 12 (twelve) weeks of the date of the Planning Authority’s decision. The proposed purchaser (acting reasonably) shall be obliged to confirm in writing to the Council within 10 (ten) working days of the date of final grant, that a planning permission received from the Planning Authority or An Bord Pleanala is acceptable or not to them.

1. That in the event that the Planning Authority or An Bord Pleanala refuses permission for the proposed development, or the proposed purchaser (acting reasonably) deem a planning permission to be unacceptable or otherwise fail to comply with any of the conditions above, the contracts will be rescinded, and all monies received will be returned, without the payment of interest.
2. That the proposed purchaser will be responsible for all costs in relation to the planning process.
3. That the transaction is subject to the Proposed Purchaser procuring a Declaratory Order for a Liquor Licence in respect of that part of the proposed development consisting of a licensed foodstore on terms and with conditions acceptable to the Purchaser. The Proposed Purchaser will require 12 weeks from the date of the satisfactory grant of planning permission for the proposed development to fulfil this condition and shall use reasonable endeavours to procure the Declaratory Order. **Disposal shall complete within 10 (ten) working days from the date of receipt.**
4. That the proposed purchaser shall satisfy the Council that they have sufficent funds to develop the site in accordance with the proper planning and development of the area.
5. That the purchaser 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 contract for sale.
6. That it is a matter for the proposed purchaser to satisfy themselves as to the existence and/or availability of services within or adjacent to the sites. The disposal is subject to the purchaser being satisfied with the results of all surveys. The purchaser agrees to undertake all surveys within four weeks of the contract signing date.
7. That the Council’s Solicitors shall draft the agreements and contracts for review and may include further reasonable terms and conditions as deemed appropriate to give effect to the terms and conditions set out herein, including provision for use of an independent expert to settle any disputes arising, as appropriate, in order to achieve a reasonable balance in the protection of the parties interests in the matter.
8. That if no development has been substantially commenced on the subject site within 3 (three) years of the completion of the sale, the Council reserve the the right or option at any time during the fourth year following the date of completion of the sale, to acquire the site back at the same consideration for which it was sold, In the event that the Council wishes to exercise this right or option it shall notify the purchaser in writing. The purchaser will be permitted a fair and reasonable extension of 12 months where the commnecement or carrying out of the Lidl development has been delayed by a Force Majeure.
9. That the dates for the performance of any of the requirements of the proposed agreement may be amended at the absolute discretion of the Chief Executive.
10. That each party shall be responsible for their own costs and fees in this matter.
11. That this proposed disposal is subject to the necessary consents and approvals being obtained from South Dublin County Council.
12. That no agreement enforceable at law is created or is intended to be created until exchange of contracts has taken place.
13. That the proposed acquisition is subject to approval of the Board of Lidl Ireland GmbH.

The lands being disposed form part of the lands acquired by the Council in 1983 from Kilcarbery Limited for the purpose of golf course, roads, and open spaces.

**Daniel McLoughlin**

**Chief Executive**