

Chapter 5 Courts Service

5.1 Refurbishment of Cork Courthouse

Introduction

Under the Courthouses (Provision and Maintenance) Act, 1935, local authorities were obliged to make premises available to the Department of Justice, Equality and Law Reform for the conduct of Court business.

With effect from 9 November 1999, the provisions of that Act were repealed and responsibility for the provision and maintenance of court buildings and facilities was conferred by the Courts Service Act, 1998 on the new Courts Service.

The capital cost of acquiring new premises, or expanding, refurbishing or improving existing court buildings and the cost of their maintenance and equipping are borne on the Courts Service Vote.

Refurbishment Project

In 1995, the Department commenced a process of refurbishment of Cork Courthouse, Washington Street, Cork, which housed Courts staff and the Cork City and County Sheriffs and their staff. Refurbishment of the exterior stonework of the building referred to as Phase I was approved by the Department in June 1995. Cork City Council (the Council) placed the contract for the work which was completed in 1999 at a cost of €3.8m which was borne on the Department's Vote.

Around the same time in 1995, the Council submitted plans to the Department for Phase II – internal refurbishment of the building.³² The Department was concerned to ensure that all aspects of the refurbishment and, in particular, project management and the architectural heritage aspects of the development were properly managed. Accordingly, the Department considered that:

- An architectural competition be instigated for the works, administered by the Royal Institute of the Architects of Ireland and OPW
- OPW be involved in the process of appointing the design team consultants.

However, the Department did not progress these objectives at that time and design work continued under the control of the Council.

By July 2001, the scale and projected cost of the project had escalated from an estimated €6.35m to over €20m. The original plans were revamped to provide additional accommodation including incorporating the original basement areas. According to the Accounting Officer, the alternative, because of the increasing demand for the rapidly expanding Cork area, would have required abandoning the existing courthouse and providing a new courthouse on a new site.

In October 2001, the OPW was asked to nominate a project manager to ensure timely and within budget delivery of the project. OPW appointed a project manager in February 2002.

³² The Cork City Architect supplied further plans for the internal refurbishment, referred to as "conceptual plans" by the Department, in March 1998.

A contract for the refurbishment was awarded to the lowest bidder on 29 April 2003. The Phase II project contract is to be completed within 18 months for the sum of €26.5m (including design team fees, furniture and equipment costs amounting to €6m).

As I was concerned about the delays in getting the project underway and the financial impact of midstream changes in the overall management of the project I sought the views of the Accounting Officer.

The Accounting Officer informed me that in his opinion it was not within the power of the Department to organise an architectural competition or the involvement of OPW in the project without the agreement of the owners (the Council). It appeared to him that such agreement might not have been forthcoming. However the position changed with the passing of the Courts Service Act, 1998 which gave statutory responsibility to the Service for the provision and maintenance of court buildings. It was possible to involve OPW after November 1999.

The Accounting Officer also informed me that the original design team was retained as it was prepared to take instructions from the Courts Service on requirements for the project, given the changed statutory role which the Courts Service then had in the provision of court facilities. They were also prepared to consult with all court users in conjunction with the staff of the Courts Service Estate and Buildings Directorate.

With regard to the escalation in cost of the project, the Accounting Officer observed that the estimated cost of €6.35m referred to was a very provisional cost and, as far as he was aware, was not based on actual plans. Construction inflation between 1995 and 2003 would have accounted for a 60% increase and would have raised the provisional cost to €10.16m. The original estimate also did not include the cost of consultancy fees, capital contributions, site investigations, furniture, fittings and equipment and contingencies totalling €6m.

With regard to the delay, from 1995 to 2003, in proceeding with Phase II of the refurbishment project, the Accounting Officer stated that it had been necessary to review the draft plans in existence when the Courts Service was established. The Courts Service was not satisfied with the plans which it had inherited from the Council. There had been no consultation with court users regarding requirements, and the plans fell far short of the accommodation and facilities required for a city of the size and population of Cork. In addition the plans did not take account of future needs in terms of office accommodation for court facilities or the need to ensure proper arrangements for holding and transferring prisoners to Court.

The Accounting Officer added that the Project Manager appointed in February 2002 reviewed the plans and costings for each element of the work, prior to tenders being sought. He stated that the revised plans bore very little resemblance to what was originally envisaged in 1995 and that the substantial changes and improvements to the original plan also contributed to the higher costs.

In all the circumstances, it was necessary for the Courts Service to undertake an extensive consultation and needs assessment examination. Although the Accounting Officer does not believe that there was an inordinate delay in having the planning completed, he acknowledged that there was a delay in obtaining approval for the financial arrangements to enable the project to proceed.

Funding the Project

It has been the practice since the establishment of the Courts Service in 1999 to fund capital expenditure on courthouses directly from the provision in Subhead B of the Courts Service Vote. The Courts Service considered having this project carried out under the Public Private Partnership (PPP) model. However this did not occur. Following negotiations between the Courts Service and the Council, it was agreed that

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the Council (which remains the owner of the building) would finance the project by means of a commercial loan arranged by the Council. The Courts Service agreed to rent the courthouse at an annual rental of approximately €2m from the Council over 20 years - the term of the loan.

The Accounting Officer stated that the total cost of this project could not be met from the Courts Service capital budget. The proposal to have the project carried out under the PPP model was not proceeded with because sanction was not obtained to do so. The Accounting Officer attributes this to considerations which emerged in connection with the impact of PPP schools projects on the General Government Balance³³. In addition, the plans had already been prepared and there would have been significant further delays if the project were to be undertaken by way of PPP.

The Department of Finance approval which was obtained for this proposal in February 2003 noted that any recourse by the Council to borrowing to finance the improvement works would be included in the calculation of the General Government Balance.

Additional Costs of Providing Interim Accommodation

Up to the time that the Courts Service Act, 1998 became law, responsibility lay with local authorities to provide accommodation for court purposes. Therefore, the burden of rent was borne by them. With effect from November 1999, the Courts Service became responsible for the cost of such rentals.

The Courts Service rents properties mostly from the private sector in order to facilitate court business. Such properties include community halls and hotels. The total annual rental charges for all rental accommodation runs to approximately €5.2m, with a negligible proportion of this being in respect of local authority premises.

Department of Finance sanction was sought by the Department of Justice, Equality and Law Reform in 1998 to enter into an agreement under which the Council would rent and adapt alternative accommodation for the Courts Service arising from the need to fully vacate the Washington Street premises for the duration of the refurbishment works. These were then expected to take up to two years. The expected total cost for a two-year period was €1.5m approximately (made up of €500,000 rental and €1m for necessary adaptation works). This was to be borne by the Department (50%) and by the two Cork local authorities.

As it seemed that rental accommodation was acquired earlier than necessary and subsequently leased for a period well beyond the anticipated completion date for the refurbishment works and at a substantially increased rental cost, I asked the Accounting Officer to provide details of the leases concluded and the costs associated with these leases. As the Courts Service assumed responsibility for providing accommodation for the staff of Cork City and County Sheriffs' Offices who had been housed in the Washington Street Courthouse premises until October 2002, I also sought details of these arrangements.

The Accounting Officer informed me that the Council leased accommodation at Camden Quay in the city for court facilities with effect from 1 May 1999 for a two-year period at a cost of €761,843 per annum (including rental and necessary refurbishment costs). As agreed, the Department met half of the cost.

After the Courts had been using the premises for some months a number of shortcomings were identified which required additional works. These works ultimately cost the Courts Service a further €565,033 leading to total Exchequer expenditure under this lease of €1,326,876 as against €750,000 originally estimated as the cost of the interim accommodation. Notwithstanding the initial expenditure on adapting

³³ See section 7.3 — Observations of the Department of Finance.

the premises to the court's needs it was noted from papers, dated February 2003, that substantial remedial work would now be necessary to deal with serious health and safety issues associated with these premises. However, the Accounting Officer informed me that these works would only have been necessary had the refurbishment not proceeded. The users of the premises, judges, staff practitioners and others are prepared to work within the constraints and deficiencies of the building.

Because of the delays in getting the project underway OPW was asked to negotiate a new lease on behalf of the Courts Service on the expiry of the original arrangement in May 2001. The landlord had been unwilling to sell the property. The minimum lease period that could be negotiated was 9 years and 11 months with a break option after five years subject to nine months penalty rent. The rental agreed was €761,842 per annum. This is a threefold increase on the rental element of the lease agreed two years earlier. The Courts Service has the option to assign the lease to another State Agency when it vacates these premises at Camden Quay.

The Accounting Officer also stated that the Courts Service has now rented accommodation for the Sheriffs. The alternative would have been a lengthy dispute with the Sheriffs, which would have frustrated and delayed the commencement of the refurbishment and possibly resulted in costly litigation. The Accounting Officer said that the arrangements in respect of the leases for the Sheriffs are personal to them and do not confer any entitlements to their successors. The annual cost of these leases is €39,489.