

## **15 Lease of Accommodation for a Probation Service Project**

- 15.1** The Department of Justice and Equality funds 46 community-based organisations across the State to develop and deliver services to adult offenders in their communities. The Bridge Project has operated in the Dublin 1 area for over 15 years, aiming to achieve community re-integration of male offenders, improve their job skills and generally assist in increasing community safety. The programme is delivered by a multi-disciplinary team with the Probation Service as the lead agency.
- 15.2** The Bridge Project operated out of leased premises in Parnell Street in the north inner city from December 1996. The rent for the premises was €90,000 a year from December 2001 to December 2008 and increased to €125,000 a year thereafter.
- 15.3** The Probation Service had concerns about the suitability of the Parnell Street premises to meet the needs of the Project, and sought alternative accommodation for it. In June 2008, the Probation Service leased premises located in Wolfe Tone Street, Dublin for use by the Project. The Chief State Solicitor's Office (CSSO) negotiated the lease with the owner of the Wolfe Tone Street premises, on behalf of the Department.
- 15.4** The lease was for 25 years, with a break option after 10 years. The premises had previously been intended for use for retail and residential purposes, but had not been stripped back to 'shell and core' finish and substantial fitting out was required to meet the needs of the Project. Following the preparation of plans and a competitive tendering process, fitting out work commenced in January 2010, and was substantially completed by May 2010.
- 15.5** While the fitting out work was ongoing, questions were raised about compliance of the development and the intended use with planning regulations, in the context of local opposition to the Bridge Project moving into the premises. The Planning Enforcement Office of Dublin City Council issued a warning letter to the Bridge Project on 22 March 2010, stating that the "planning permission granted on 9 January 2001 for this development expired on 8 January 2006".
- 15.6** The Department subsequently gave an undertaking to Dublin City Council not to occupy the Wolfe Tone Street premises and to regularise the situation.
- 15.7** This chapter examines the expenditure charged to Vote 19 Justice and Equality related to the lease, and the factors that gave rise to the situation where, despite the outlay, the premises has not become available for use by the Bridge Project.

### **Confirmation of Planning Compliance**

- 15.8** The Law Society of Ireland has established a practice (in place since the 1970s) that the solicitor acting on behalf of a purchaser/lessee insists on an opinion on compliance with planning permission from an architect engaged by a landlord/vendor showing that the development of the property is in substantial compliance with planning permission. The Chief State Solicitor stated that an architect's unqualified certificate is accepted in accordance with the Law Society established practice as satisfactory evidence of compliance with planning permission. The Royal Institute of Architects in Ireland (RIAI) has published standard forms of opinions which are agreed with the Law Society.

- 15.9** The planning permission granted by Dublin City Council in relation to register reference 3330/00 related to a change of use of a retail unit and a residential unit on the ground floor of what is mainly an apartment building, to a commercial office space. Under Section 40 of the Planning and Development Act 2000, a grant of planning permission must be implemented within five years or (if an extension of permission is not sought and granted), it is treated as expired or abandoned.
- 15.10** In the course of negotiation of the lease in 2007, the CSSO raised planning concerns in relation to the offer of eight car parking spaces for use by the Bridge Project. The original planning permission for the building provided that the car spaces were exclusively for use by residents. In order to avoid setting back provision of improved accommodation for the Bridge Project, the Department decided to proceed with rental of the office space (1,436 m<sup>2</sup>) but to exclude the car parking spaces from the lease.
- 15.11** The CSSO has stated that in July 2007 (and again in January 2008) it requested a commencement notice in relation to the change of use, but that this was never provided. A commencement notice is a notification to a building control authority that a person intends to carry out either work or a material change of use to which the building regulations apply. Commencement notices can be inspected at planning offices free of charge.
- 15.12** In October 2007, the CSSO instructed its own agents to carry out a planning search in Dublin City Council in respect of the property. This consisted of a search of the planning register which records all relevant planning information in respect of a development. The report on the search was forwarded to the property owners' solicitor in January 2008 for explanation.
- 15.13** In March 2008, the CSSO asked the property owners' solicitor for confirmation that the change of use process was completed prior to the expiration of planning permission 3330/00.
- 15.14** The Chief State Solicitor has stated that, in response to its request, the property owner's solicitor confirmed in April 2008 that the change of use was completed prior to the expiration of the planning permission. The CSSO also received an architect's opinion on compliance, dated 5 February 2008. This was prepared in the standard RIAI format by a registered member of the RIAI. The opinion referred specifically to planning application 3330/00, and does not contain any amendments or qualifications. It was stated by the architect to be based on an inspection of the relevant documents at the offices of Dublin City Council Planning Department and a visual inspection of the Wolfe Tone Street premises on 1 February 2008. The architect also stated in his opinion that the development was in substantial compliance with the planning orders.
- 15.15** The property owners' solicitor wrote to the CSSO on 15 April 2008, sending a draft lease. In the letter, he states that "Our clients' architect has confirmed to us that, as the premises ... were marketed for use as offices within the five year period on foot of planning permission 3330/00, that the change of use ... was completed prior to the expiration of that planning permission. No works were required to implement the planning permission. This was simply a change of use."
- 15.16** The Chief State Solicitor has stated that, if unqualified, an architect's opinion is accepted in accordance with Law Society established practice as offering satisfactory evidence of compliance. She took the view that there was no requirement to look behind the opinion as it was in standard RIAI format, it was made by a registered member of RIAI and did not contain any qualifications or amendments.
- 15.17** The Accounting Officer of the Department of Justice and Equality has stated that the Department did not foresee the need to engage an architect or to carry out a planning search in Dublin City Council. It relied on the advice of the CSSO in this matter, as it has done in relation to other leasing arrangements.

- 15.18** The Department has stated that it was informed at a meeting with the Dublin City Council Planning Enforcement Office on 30 March 2010 that planning permission did not revert to the previous uses once the permission granted under 3330/00 (for commercial office use) expired. The Department was informed that planning permission for any type of use of the premises would now have to be applied for. The Department's understanding, following a detailed planning history inspection, is that the 2001 office use permission was never enacted and therefore the premises does not now have the benefit of any established use.

## Costs Incurred

- 15.19** The initial rent for the premises was €309,000 a year, payable quarterly in advance, but with a rent free period at the outset. On that basis, the minimum value of the lease was of the order of €2.8 million. The Department also took on liabilities for management fees and service charges.
- 15.20** In addition to the rental, the Department was liable to pay VAT on creation of the lease. This amounted to €0.461 million and was paid by the Department in June 2008.
- 15.21** Rental payments commenced in the first quarter of 2010, and continued until the third quarter of 2011, when the Department ceased payment of rent.
- 15.22** The total sum paid by the Department in respect of rent, management fees and service charges, and insurance amounted to €0.536 million.
- 15.23** Following a tendering competition in 2009, the Department awarded a contract to a construction company to carry out the fitting out of the leased premises at an agreed price of €0.935 million. The fit out of the premises commenced in January 2010. Following the intervention of the Dublin City Council Planning Enforcement Office, the fitting out work was wound down and the site made safe and secure during a three-week period in April/May 2010. Work was fully suspended by 7 May 2010, and has not recommenced.
- 15.24** Payment for work completed was made up to 29 September 2010, with retention of a portion of payment due as normal. The suspension of work and non-occupation of the premises meant that no 'snagging' could be done and therefore the retention sums continued to be withheld. The Department is not in dispute with the company who completed the work so retention amounts were finally paid in December 2011 and February 2012 (to the contractor) and January 2012 (to the architect including the Quantity Surveyors and the Mechanical and Electrical contractors). The contractor has only been paid for work completed.
- 15.25** Total payments to the contractor amounted to €0.917 million. Professional fees related to the project amounted to €0.169 million. At the end of August 2012, the total expenditure by the Department on the Wolfe Tone Street premises has amounted to €2.083 million.
- 15.26** On the instruction of the Department, the CSSO wrote to the property owners on 30 November 2011 seeking agreement to rescind the lease. This was rejected.
- 15.27** The CSSO were informed on 16 April 2012 that receivers had been appointed over certain assets of the property owners including the property at Wolfe Tone Street. The receivers sought confirmations that the Department would make the payments provided for in the lease.

## Impact on the Bridge Project

- 15.28** A health and safety audit of the Bridge Project's Parnell Street premises was undertaken on behalf of the Probation Service in December 2011. The audit concluded that that building posed a serious health, safety and fire risk and was therefore in breach of the Health and Safety at Work Act.
- 15.29** The Project moved in January 2012 from Parnell Street to its current location in shared premises in Gardiner Row, where it is paying €600 a month for the use of specified rooms. In addition, the Community Employment Scheme which is attached to the Bridge Project will rent a premise in Ballybough at a cost of €4,000 for a 12-month period from September 2012. It is the Department's intention in the longer term to transfer the main Bridge project activities from Gardiner Row to co-located accommodation in the Probation Service offices in the north inner city.

## Conclusions and Recommendation

- 15.30** The Department incurred expenditure in relation to the lease of the premises in Wolfe Tone Street amounting to over €2 million, in respect of which the intended benefits have not been received. The Bridge Project continued in poor standard accommodation until 2012, until it was forced to leave as a result of health and safety risks. This was almost six years since the search for alternative premises commenced. The project is now accommodated under short-term arrangements.
- 15.31** The Department placed reliance on the CSSO to provide legal advice in relation to negotiation of the lease, and the carrying out of the necessary checks. In the circumstances, it was reasonable for the Department to expect that non-compliance of the premises with planning requirements would have been identified and pointed out before the lease was signed.
- 15.32** The CSSO followed the established conveyancing procedure of relying on the vendors/lessors to provide an architect's opinion of compliance with planning requirements. An opinion was provided in the required format by a registered person, and the CSSO was entitled to rely on this in accordance with recommended Law Society practice. Nevertheless, the statutory period to act on a change of use had expired and the basis on which a change of use would be recognised by the planning authorities was specifically adverted to in correspondence between the CSSO and the legal representative of the property owners during the lease negotiations. Furthermore, the nature of the Department's intended use of the premises and the location of the premises in an otherwise residential complex increased the likelihood of objections in the event that there was any doubt as to planning compliance. These were not identified by the CSSO as risk factors that might require some further assurance before the lease was agreed, to safeguard the State's financial interests.
- 15.33** The Chief State Solicitor has stated that the choice of a residential complex for the location of the premises and the likelihood of objections to the use of the premises are not legal issues and accordingly the CSSO would not advise on such issues. They are issues for consideration by the personnel engaged to locate a suitable property in the first instance.
- 15.34** In the context of the prospective cost of the lease (a minimum of €3.2 million over ten years, including VAT) and the cost of fitting out the premises (around €1 million), the cost involved to the State parties in obtaining additional assurance on planning compliance in a relatively uncomplicated planning case would not have been excessive.

**Recommendation 15.1:** The CSSO should review its risk assessment in relation to planning compliance on property acquisitions and the practice of reliance on architects' opinions on compliance, and consider the need for additional assurance procedures where compliance risks are evident.

**Chief State Solicitor's Response:** Not agreed. The purpose of the Law Society of Ireland guidance/practice directions is to address risk arising in transactions of this nature. These have been drawn up by the Conveyancing Committee of the Law Society, comprised of conveyancing experts who consider various issues which arise in conveyancing matters and issue guidance/practice directions to solicitors on appropriate practice and standards. The CSSO cannot act unilaterally. It is a matter for the Law Society to review its standards after due consultation with members and stakeholders and to issue any further guidance/practice directions. The CSSO is bound to follow the current guidance /practice directions.

Confirmation of compliance with planning is obtained from an architect or other appropriately qualified professional with knowledge of the planning history of the property. It entails examination of the planning documentation pertaining to a property, inspection of the property and taking instructions on the planning history of the property. It is not recommended Law Society practice for a lessee to engage an architect to certify compliance with planning. The difficulty in doing so is that the lessee has no knowledge of the planning history of the property to instruct the architect. This is why the opinion issues from an architect instructed by the owner of the property.

**Department of Justice and Equality Accounting Officer's Response:** The Department will work in conjunction with the CSSO to ensure there is a cross-checking system in place to provide some added assurance on the reliance on the expert's opinion in such cases.