

Chapter 3 Office of Public Works

3.1 Provision of Accommodation for Probation and Welfare Service

It was noted in the course of audit that the Office of Public Works (OPW) leased the properties as shown on Table 3.1 to provide office accommodation for the Probation and Welfare Service (PWS).

Table 3.1 Properties Leased

Property	Location	Rent Commenced On	Term Years	Lease Signed	Annual Rent Payable €	Annual Service Charge €	Square Feet	Cost of Fit-Out €	Date of Completion of Fit-Out	Date of Occupation
A	Dublin	1/6/01*	10	Not signed	152,368	49,460	7,500	1,530,000	Ongoing	October 2003
B	Dublin	1/5/00	10	Not signed	45,802	-	3,000	360,000	August 2003	August 2003
C	Midlands	1/2/00	20	Not signed	26,664	3,631	2,100	110,599	25/9/00	February 2001
D	South East	14/2/00	20	Not signed	19,046	-	2,000	87,106	28/1/00	June 2000
E	North East	17/9/00	9	Not signed	48,885	-	2,806	**	**	July 2001

*Lease commenced 1/6/00, first year free. Service charges commenced 1/6/00.

**Fit-out carried out by the Department of Justice. Details not available.

An examination of the files relating to the leasing of the properties revealed the following:

Delays in signing lease agreements

At the time of audit in June 2003, lease agreements had not been signed in respect of any of the properties, even though lease payments had begun from as early as February 2000.

As I was concerned that delays in the signing of the lease agreements may have given rise to the State not having the protection against risks which it would normally have in a signed agreement, I enquired from the Accounting Officer as to the reason for the inordinate delay in signing the lease agreements subsequent to the commencement of lease payments, and whether he thought the delays were justified.

The Accounting Officer stated that the process of completing the formal legalities associated with the signing of lease agreements could at times be somewhat protracted. Invariably detailed issues relating to such matters as insurance, repairs and maintenance, rent reviews, service charges, etc, arose which required clarification, discussion and negotiation. All of this could result in extensive correspondence and consultation before agreement was reached.

Notwithstanding this, he accepted that the completion of the legal process had taken longer than it normally would. He attributed this in part to discontinuities in work-flow which occurred following the re-organisation of the work in the Property Management Services area of the Office and also, in the case of property A, to uncertainties surrounding the project's future following objections from local traders and residents to the location of a Probation and Welfare Service unit within their locality. He stated that leases for properties B, C, D, and E would soon be signed and that the Chief State Solicitor was continuing to pursue all outstanding issues in relation to property A with a view to finalising matters as soon as possible.

Fitting Out

Cost of Fitting Out

The cost of fit out of property A was estimated to be between €127,000 and €152,000 at the time the building was being initially assessed as to its suitability in May 2000. However in June 2001 the OPW consultant architect estimated that the cost of the fit out would be €1.2m, (excluding design fees) and in August 2002 expressed concern that some of the work included in the proposed fit out would not normally be included in a fit out project. Her concern centred on proposed work on the boiler room, plant room, replacement windows, insulation to external walls, mechanical and engineering services, new felt on roof, access ladders, fireproofing, fire alarms and emergency lighting. The actual cost of fit out, work on which was commenced in April 2003, is expected to be about €1.53m.

I asked the Accounting Officer if he was satisfied that all of the works carried out were properly the responsibility of and should be paid for by the OPW rather than the landlord, particularly in the light of the reservations expressed by the consultant architect, and that they will not be used by the landlord at rent review stage to increase the rent.

I also sought information from him on the huge disparity between the estimated and actual fit out costs, and the wisdom of carrying out such major works without a lease agreement being in place.

The Accounting Officer stated that the landlord was carrying out all works proper to his remit and that there were no works being carried out by OPW that were the responsibility of the landlord.

He also stated that in these situations OPW always insisted that any fit out works carried out by OPW were excluded at rent review, and that although the lease had yet to be signed, the Chief State Solicitor had made it clear to the landlord's solicitor that OPW would not agree to any rent review clause which did not except the OPW fit out from the rent review.

The original estimate of €150,000 was a preliminary estimate based on a walk through inspection. This estimate did not take into account the final brief of requirements. It also did not include mechanical and electrical costs, structural partitioning works, air conditioning and the costings were not based on any detailed sketch design drawings. The final cost of €1.53m was in line with current OPW cost norms.

He went on to state that in situations where a customer Department had a priority need to gain access to a premises, a judgment had to be made by the OPW between the obligation to satisfy the customer Department's requirements on the one hand and the practicalities of completing the legal formalities on the other hand. Bearing in mind the fact that the detailed legal formalities could take some considerable time to complete, the decision had been taken that the fit out works should commence prior to the finalisation of the lease so as to facilitate occupation of the premises by the PWS.

Delays in Completing Fit-Out

Even though lease payments had begun on properties A and B in June 2001 and May 2000 respectively, the fit out work will not have been completed by OPW in the case of property A until October 2003, and in the case of property B was not completed until August 2003.

I enquired from the Accounting Officer as to the reasons for the inordinate delay in having the fit out works completed and bringing the buildings into productive use, subsequent to the commencement of lease payments, and whether he thought that the delays were justified.

The Accounting Officer informed me that the main reason for the delay in completing the fit out works for property A was the fact that local traders and residents had been uneasy about the proposed use of the

premises. Furthermore, various works had to be completed by the landlord before the premises were deemed suitable for the PWS, such as replacement of stairs, installation of fire doors and installation of a lift.

In relation to property B he stated that the OPW fit out could not be progressed until necessary remedial works had been carried out by the landlord, and that as soon as the landlord's works had been satisfactorily completed, OPW had commenced the fit out and the premises had been occupied by the PWS in August 2003.

Delays by Landlord in carrying out Repairs

In October 2001 the consultant architect for OPW raised concerns over the condition of the brickwork, roof and drains in relation to property B, and indicated that there were no drainage or water services provided for the unit. In May 2002 he produced a further report containing details of matters to be completed before the fit out could go ahead, including water and drainage. Despite writing to and meeting the Landlord in July 2002, it seemed from documents on file that the repairs had still not been satisfactorily completed by November 2002, when the Fitting Out was in progress.

I asked the Accounting Officer if the building had been inspected prior to the commencement of lease payments, and if so the reasons why the structural repairs needing to be carried out by the Landlord, which had still not been completed by November 2002, had not been identified and completed before any rent was paid.

The Accounting Officer stated that the building had been inspected prior to the commencement of lease payments, but that this acquisition must be viewed in the context of the prevailing market conditions at the time, when there was a scarcity of suitable accommodation available and conditions were advantageous generally to landlords. Because of the priority requirement of the PWS it had been decided to secure the premises as quickly as possible. At all times discussions had been ongoing with the landlord, regarding the works to be completed by him prior to the commencement of the OPW fit out. A consultant architect had been appointed by OPW to oversee the project and the landlord's works had been clearly identified. The consultant Architect involved had clearly certified that all necessary landlord works had been satisfactorily completed prior to the commencement of the OPW fit out in late 2002.

Rent Levels

The OPW valuer estimated that the rent payable for property A should have been €11.50 per square foot. Rent at the rate of €20.31 was subsequently agreed. The lease term was 10 years, the rent would be payable in advance and the first year would be free. A rent review would take place after five years to open market value.

I asked the Accounting Officer if he was satisfied that the rent agreed, which was almost twice the going rate in the area as estimated by the OPW valuer, was justified in the particular circumstances.

The Accounting Officer stated that while the rent agreed was €20.31 per square foot, per annum, the fact that the first year was rent free had effectively reduced this to €16.25 per square foot. This was practically half the initial asking price of €29.20 and compared extremely favourably with rents being paid by other tenants in the shopping centre. This level had been achieved despite the urgency of the requirement and the lack of suitable alternatives, and it was the professional advice of the OPW Valuer that these were the best terms achievable.

He informed me that the leasing of property A should be viewed in the context of the extremely location specific requirements of the PWS particularly in the greater Dublin area. The general policy was to relocate from central city locations to local communities and the availability of suitable accommodation in such circumstances was often problematic.

OPW Management Processes

As the audit findings seemed to raise serious questions as to the adequacy of OPW's procedures in relation to the renting of property, I put it to the Accounting Officer that there needed to be a greater emphasis by OPW on bringing properties into productive use within a much shorter timeframe following the commencement of lease payments, clearer rules needed to be determined in relation to the expenditure which would come within the definition of fit out costs, and procedures needed to be streamlined so that there was no undue delay in signing lease agreements once the terms had been agreed, to ensure that the State's interests were adequately protected.

The Accounting Officer stated that in the past year a full set of business procedures had been prepared and approved to clarify the administrative process in the property management area of the OPW. These procedures had recently been endorsed by the National Standards Authority of Ireland (NSAI) and had been accepted by the Authority as being in compliance with I.S.O. requirements. The application of these procedures was being regularly monitored both internally by the OPW Quality/Compliance Manager, and externally by periodic NSAI audits. It was expected that this would lead to a more consistent and effective operation of the OPW property business unit. The Commissioners further expected that the consistent application of the new business procedures would result in property acquisitions, particularly leases, being completed in a timely manner. This was dependent on the cooperation of the landlord, as some matters such as structural works were issues which necessarily had to be agreed between OPW and the landlord. Notwithstanding the foregoing, there would, in exceptional circumstances, be instances where all of the agreed procedures could not be followed to the letter.

3.2 Use of Limited Liability Companies

In my Annual Report for 2000, I referred to the acquisition by OPW of land which is thought to include a significant part of the lands on which the Battle of the Boyne was fought. The acquisition was effected in August 2000 through the purchase for €9.4m of the share capital of a company, Deepriver Limited, which owned most of the site and the direct purchase of the rest from another company for €570,000. The shareholders of Deepriver Limited insisted that the sale of the main portion of the site should be through the purchase of the company for tax purposes.

An examination of correspondence between OPW and the Department of Finance subsequent to the acquisition of the company revealed that the Department strongly advised that the company should be liquidated as soon as possible. However, I noted at the date of audit in June 2003 that the company was still in existence under another name and incurring expenses associated with its status as a company. Since its acquisition in August 2000 company related expenses of €55,000 were paid to cover tax advice and audit services, legal advice and insurance. I also noted that during that period, the activities of the company were confined to matters such as grazing and fishery rights and the provision of security at the site – matters that would otherwise in the normal course be dealt with directly by OPW. In view of what appeared to me to be unnecessary expenditure, I sought the Accounting Officer's justification for the company's continued existence.

He informed me that, having acquired the company, the question arose as to whether it should be liquidated. In considering the matter, the Commissioners for Public Works were conscious of their strategic responsibility to develop innovative and commercially minded approaches for the provision and development of State property. Concepts such as public private partnerships and collaborations were

Office of Public Works

being actively considered. At the time there was no clear structure, legal or otherwise, or precedents in place to allow Government Departments undertake such activities. In that context it was thought that the coincidence of the availability of a limited company – Deepriver Limited – might perhaps provide an opportunity or vehicle to pursue non-traditional approaches. It was decided therefore to take no immediate steps to liquidate the company. He stated that the name of the company was changed to Public Property Development Limited to demonstrate a clear break with its previous private sector existence and because it was considered desirable to reflect in its title the fact that the company and its assets were now publicly owned.

The Accounting Officer also informed me that by June 2003 precedents had been established and the National Development Finance Agency had been created to deal with non-national funding of State capital projects. The Commissioners were therefore satisfied that the intended use for which the company was retained was no longer relevant and they as directors resolved to wind up the company. The necessary steps have been put in place and the estimated timescale is six months.

As regards the property itself, he stated that preliminary plans had been drawn up by OPW to deal with how the site and buildings could be developed. The indicative cost of development was €40m but at this stage funding is not available to undertake the work. To date, only minor work such as surveys of the house and grounds have been carried out to the value of €212,000.

Acquisition of a limited company was also used to purchase an office building in Dublin in September 2000. I noted that this company, Colmstock Properties Limited was also still in existence at the date of audit to no apparent purpose and that €59,000 had been paid out in the period since then to cover company related expenses. The Accounting Officer informed me that the process of winding up Colmstock Properties Limited was underway and it was expected to be concluded by the end of 2003. The estimated cost of the winding up is €36,000.