

Planning and Development Acts 2000 to 2021

Planning Authority: Dublin City Council

Planning Register Reference Number: 4121/18

Appeal by Merchants Quay Ireland (Homeless and Drug Services) care of Brock McClure of 64 York Road, Dún Laoghaire, County Dublin against the decision made on the 25th day of July, 2019 by Dublin City Council to refuse a permission to Merchants Quay Ireland (Homeless and Drug Services) for the proposed development.

Proposed Development: Permission is sought for development comprising: (1) demolition of existing bathroom block (circa 51 square metres) and reconfiguration of existing services area to provide new off-street waiting area at ground floor level on eastern boundary with new access gates off Merchant's Quay and pergola canopy over; (2) new single storey bathroom block (circa 77.5 square metres gross floor area), reconfigured service yard with new escape stairs and new boundary wall to southern elevation and smoking area along eastern boundary; (3) demolition of existing entrance ramp and canopy on front elevation to Merchant's Quay to provide a new single storey enclosed ramp entrance (circa 24.7 square metres) and new entrance doors; (4) the provision of a Medically Supervised Injecting Facility

(MSIF) at existing vacant basement level (circa 387 square metres gross floor area). The MSIF will be accessed via refurbished and covered passage from new gate at ground floor level on western elevation and will comprise an assessment/intake area, staff space, clinical area (comprising seven number injecting booths), after care area, ancillary bathrooms, plant space and circulation areas; (5) demolition of existing water tank at roof level and redundant chimney and gas skid enclosure at western boundary; (6) new backlit stainless steel signage (circa five square metres) on northern and eastern elevation, replacement glazing and general upgrade of materials/finishes on all elevations, all at 13/14, Merchant's Quay (Riverbank Building), Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

The Board had regard to the totality of the documentation on the file, the Inspector's assessment and findings and the judgement of the High Court dated 15th day of July, 2021 [2020 JR 134] and noted the following:

- (a) Support for the delivery and operation of a Medically Supervised Injecting Facility (MSIF) is included in the National Drug Strategy – Reducing Harm, Supporting Recovery – A health-led response to drug and alcohol use in Ireland 2017 - 2025 identified that there is a recognised problem with street injecting in Ireland, particularly in Dublin city centre. Strategic Action 2.2.29 of the National Drug Strategy seeks to provide enhanced clinical support to people who inject drugs and mitigate the issue of public injection to be delivered by establishing a pilot supervised injecting facility and evaluating the effectiveness of the initiative (with HSE acting as the lead agency) and Department of Health, UISCE, Dublin City Council, relevant Local Authorities, Community and Voluntary sectors as partners. The stated intention for the HSE is to establish the first Supervised Injection Facility on a pilot basis for 18 months.
- (b) The operation of the Medically Supervised Injecting Facility would be regulated by licence under the Misuse of Drugs (Supervised Injecting Facilities) Act 2017 ('the Act of 2017') and in this instance it is proposed to operate the medically supervised injecting facility on an initial 18-month pilot basis. Under section 5 of the Act of 2017, the Minister has powers to revoke, suspend, or amend a licence at any time if the licence holder has become ineligible to hold a licence, or is in breach of regulations made under the Act or the conditions of the licence concerned. It is proposed that a monitoring committee will oversee the operation and governance of the facility. The monitoring committee will be chaired by the HSE and will include representation from the Department of Health, An Garda Síochána, Dublin City Council, The Union for Improved Services, Communication and Education (UISCE), and other stakeholders from the local community and statutory/voluntary services. The applicant has committed to ongoing community engagement and collaboration with An Garda Síochána.

- (c) The development would be consistent with provisions, as set out in the Dublin City Development Plan 2022 - 2028, including Policy QHSN50 which supports inclusive and accessible social and community infrastructure, Policy QHSN52 which supports the Sláintecare Plan in the delivery of the HSE and agencies and community based services in the provision of appropriate healthcare facilities (including drug and alcohol services) and to encourage the integration of healthcare facilities in accessible locations within new and existing communities.

- (d) The granting of a temporary permission for 18 months is of a time period aligned with the pilot period prescribed in the tender documentation at which point an external evaluation of the pilot phase will be carried out by an independent agent.

- (e) The nature of the existing development on the site, the urban accessible context of the site and the existing uses in the neighbourhood.

Proper Planning and Sustainable Development

The Board considered the engagement with, and assessment by, the Inspector of all submissions on file including the objection of the Board of Management of Saint Audeon's National School ("the local school") and agreed with his findings.

The Board was satisfied that the proposed development has a clear demonstrated need and commitment by Government, as set out in Strategic Action 2.2.29 of the National Drug Strategy, on the basis that it would provide clinical support to people who inject drugs, and it would mitigate the issue of drug injection in public areas. The Board decided that the granting of planning permission for an operational period of 18 months would enable the impact of the development to be assessed, having regard to matters including residential amenity, amenity of other property and uses in the neighbourhood including the school community and other community uses, the local economy including tourism business, the public realm and public safety.

Having regard to the provisions of the Development Plan, including in particular the “Z5” zoning and the mix of established uses in this city centre urban location, the Board considered that the land use was not incompatible with these established uses.

The Board is satisfied that the proposed development, including the physical alterations proposed to the existing building would positively contribute to the urban design of the streetscape and the visual amenities of the area and would not adversely affect the built heritage of the area. The Board is also satisfied that the proposed development would be acceptable in terms of traffic safety including the safety of pedestrians and other vulnerable road users in the area.

In conclusion, the Board is satisfied that the proposed development would be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within a suitably zoned and adequately serviced urban site, the Inspector's Report, and submissions on file.

In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, either by itself, or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted to the planning authority on the 28th day of June, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of the premises as a Medically Supervised Injecting Facility shall cease on or before the expiration of a temporary period of 18 months from the date of first operation, unless before the end of that period, permission for the continuance of the use beyond that date shall have been authorised by way of a separate grant of permission.

Reason: To allow for a review of the development and to enable the impact of the development to be assessed having regard to the amenity and sustainability of the local neighbourhood, including the local school and other community facilities, the resident community, the local economy including tourism business, and the public realm in general.

3. The Night Café facility shall not operate within the subject building, unless as otherwise granted by way of a separate application for permission.

Reason: In the interest of clarity and to control the scale and extent of services and activity on the subject site.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the basement level of the proposed development shall be restricted to a Medically Supervised Injecting Facility (as specified in the documentation lodged with the application and appeal), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

5. The development shall be managed and operated in accordance with the measures outlined in the Public Realm and Community Engagement Plan (June 2019) and the Operations Plan (June 2019), as submitted to the planning authority on the 28th day of June, 2019.

Reason: To ensure the efficient operation of the facility and to protect the amenity and safety of the local neighbourhood, including the local school community and other community facilities, the resident community, the local economy including tourism business, and the public realm in general.

6. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

8. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

10. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City (Saint Stephen's Green to Broombridge Line) in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

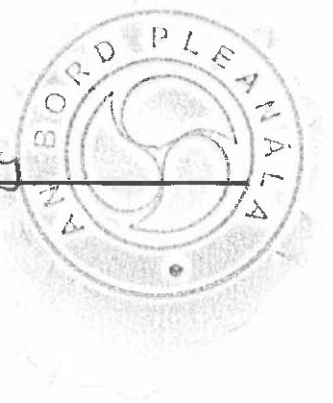
Patricia Calleary

Patricia Calleary

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.



Dated this 21 day of December 2022.