

Planning and Development Acts 2000 to 2022

Planning Authority: Dublin City Council

Planning Register Reference Number: 4610/22

Appeal by HPREF HSQ Investments Limited care of Declan Brassil and Company of Lincoln House, Phoenix Street, Smithfield, Dublin against the decision made on the 28th day of September, 2022 by Dublin City Council to refuse permission to HPREF HSQ Investments Limited for the proposed development.

Proposed Development: The proposed development will provide a mixed-use commercial development comprising of a hotel (238 number bedrooms) and an office block delivering a cumulative Gross Floor Area (GFA) of 32,602 square metres, inclusive of basement area. The proposed development consists of: Site clearance and localised demolitions to remove part of the podium and Basement Level -1 reinforced concrete slabs at the interface of the proposed hotel and office blocks, together with the incorporation of part of the existing basement level structure extending to approximately 4,228 square metres (GFA). The proposed basement will be integrated within the existing basement levels serving the wider HSQ development and will be accessed from the existing vehicular ramped accesses/egresses onto/off Saint John's Road West and Military Road to the north and east, respectively. The

proposed basement area is split into two areas to provide a dedicated Hotel Basement area of approximately 2,132 square metres (GFA) and an Office basement area of 2,096 square metres (GFA). The construction of a five-storey hotel (over lower ground and basement levels) to provide 238 number bedrooms. At basement level provision is made for 24 number car parking spaces; two number motorcycle spaces together with plant and storage rooms. A waste storage area with dedicated loading bay/staging area is provided along with dedicated set-down area for deliveries. A dual-purpose service bay is also provided at basement level with modifications to existing line markings to the basement parking area to accommodate the development. At Lower Ground floor level provision is made for 14 number Bedrooms; Conference Room; Kitchen and Staff facilities and Changing Rooms/WCs plus ancillary Gym. This floor is arranged around an internal courtyard space. Provision is made at Podium level for 19 number Bedrooms; Dining Area and Foyer with entrance at the south-eastern corner of the building onto a new laneway separating the proposed hotel and office building. Provision is made at the south-western corner at podium level for an ESB sub-station/switch room and 15 number Sheffield type bicycle stands are provided for the hotel and the retail/cafe unit, providing storage space for 30 number bicycles. A total of 205 number bedrooms are provided at the upper levels (above podium level). The top floor of the hotel (fourth floor) has a splayed setback to provide a west facing roof terrace. An ancillary hotel bar (118 square metres) opens onto this roof terrace. The construction of a 12-storey (over lower ground and basement levels) office building to the east of the proposed hotel building to provide 19,474 square metres of office floorspace (GFA) from lower ground floor level and above. Provision is made at basement level for 30 number car parking spaces; two motorcycle spaces and 120 number bicycle storage spaces together with plant and storage rooms. Provision is made for a further 196 number bicycle storage spaces at Lower Ground floor level plus changing rooms (including showers). At podium level two number ESB sub-stations and switch rooms are proposed. The foyer and entrance is provided at the southern end of the building at Podium level

along with a Retail/Cafe unit of 208 square metres at the south-western corner of the building. The building is setback at fourth floor level to provide a west facing roof terrace. Splayed setbacks to the southern and eastern elevations at the eleventh-floor level forms a roof terrace that wraps around the south-eastern corner of the building. Plant is provided at rooftop level that is enclosed by curved louvred screens and PV panels. Works proposed along the Saint John's Road West frontage include the omission of the existing left-turn filter lane to the vehicular ramped access to the HSQ development and re-configuration of the pedestrian crossing at the existing junction together with the re-configuration of the existing pedestrian crossing over the westbound lanes of Saint John's Road West leading to an existing pedestrian refuge island and re-alignment of the existing footpath along the site frontage onto Saint John's Road West to tie into the reconfigured junction arrangement. Drainage works proposed include the provision of two number below basement surface water attenuation tanks with duty/stand-by arrangement pump sumps and associated valve chambers, and two number below basement foul pump sumps with duty/stand-by arrangement and 24-hour emergency storage and associated valve chambers. New foul drainage and stormwater drainage connections are proposed to existing foul and storm sewers in Saint John's Road West with associated site works. Hard and soft landscaping works are proposed at lower ground level along Saint John's Road West and at podium level to provide for the extension and completion of the public plaza to the south of the proposed Office Block and the provision of a new pedestrian laneway connecting St John's Road West with the public plaza at podium level. The application is accompanied by an Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS). All at Heuston South Quarter which is bounded by Saint John's Road West (to the north), Military Road (to the east) and the Royal Hospital Kilmainham (Protected Structure) (to the west and south), Kilmainham, 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

In arriving at its decision, the Board had regard to the following:

- (a) The location of the site within the Heuston and Environs Strategic Development Regeneration Area and the Z5 'City Centre' zone, as set out in the Dublin City Development Plan 2022 - 2028, which aims to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity;
- (b) The nature, scale and design of the proposed development, which would be in accordance with the policies and objectives, as set out in the Dublin City Development Plan 2022 - 2028;
- (c) The pattern of existing and permitted development and the availability of adequate infrastructure in the area;
- (d) The provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth;

- (e) The provisions of the “Urban Development and Building Heights Guidelines for Planning Authorities” issued by the Department of Housing, Planning and Local Government in December, 2018;
- (f) The provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019 - 2031, which supports compact sustainable growth;
- (g) The provisions of the Greater Dublin Area Transport Strategy 2022 – 2042, prepared by the National Transport Authority;
- (h) The Climate Action Plan 2023, prepared by the Government of Ireland;
- (i) The “Planning System and Flood Risk Management Guidelines for Planning Authorities”, issued by the Department of the Environment, Heritage and Local Government in November, 2009 (including the associated Technical Appendices);
- (j) The “Architectural Heritage Protection Guidelines for Planning Authorities”, issued by the Department of Arts, Heritage and the Gaeltacht in 2011;
- (k) The submissions and observations submitted with the application and the appeal;
- (l) The reports of the planning authority; and
- (m) The report of the Planning Inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information and reports submitted as part of the subject application, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and furthermore, the Board considered, particularly in view of the fact that there is no direct hydrological connection to any European site that, either by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not have a significant effect on any European site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment would not, therefore, be required.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale, location and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application and appeal,

- (c) the reports and decision the planning authority, and the submissions received from third party observers and the prescribed bodies in the course of the application and the appeal, and
- (d) the report of the Planning Inspector.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the examination, as set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and the submissions made in the course of the planning application and the appeal. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation, including environmental conditions, and these are incorporated into the Board's decision.

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- (a) Positive socioeconomic effects on population and human health associated with increased employment and demand for services during the construction and operational phases;

- (b) The potential for negative effects on human health, air, and climate associated with nuisance/disturbance emissions during the construction phase, which would be addressed through construction management mitigation measures and would not result in any unacceptable residual effects.
- (c) The potential for significant negative impacts on cultural (architectural) heritage, including the Royal Hospital Kilmainham and its associated gardens and structures (all protected structures), which would be satisfactorily addressed through embedded design mitigation measures including the amended design submitted with the appeal, and would not result in any unacceptable residual effects.
- (d) The potential for significant negative impacts on landscape, including the protected Cone of Vision to and from the Royal Hospital Kilmainham site, which would be satisfactorily addressed through embedded design mitigation measures including the amended design submitted with the appeal, would not result in any unacceptable residual effects.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the proposed mitigation and monitoring measures, as set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, both by itself, and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conclusions on Proper Planning and Sustainable Development

The Board decided, by a 2:1 vote that, subject to compliance with the conditions set out below, the proposed development would comply with the policies and objectives of the Dublin City Development Plan 2022 - 2028, including the 'Z5 – City Centre' zoning for the site, would constitute an acceptable quantum of development on this accessible brownfield site within the 'Heuston and Environs' Strategic Development Regeneration Area, and would be served by an appropriate level of public transport and wastewater, surface water, and water supply infrastructure, which would be acceptable in terms of traffic safety and convenience, and would not be at risk of flooding or increase the risk of flooding to other lands. The Board considered that the proposed development would be acceptable in terms of urban design, height and scale, would not seriously injure the visual amenity or landscape character of the area including the identified Cone of Vision from the Royal Hospital Kilmainham site, and would not seriously detract from the character or setting of the area's architectural heritage, including the protected structures within the overall Royal Hospital Kilmainham complex.

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 plans and particulars received by An Bord Pleanála on the 25th day of October, 2022, 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 proposed development shall be amended as follows:
- (a) The development shall be carried out in accordance with the amended design received by An Bord Pleanála on the 25th day of October, 2022.
 - (b) On-site car-parking provision shall be limited to car-share and accessible spaces only, the quantum of which (including a proportion of electric vehicles) shall be agreed with the planning authority.
 - (c) The treatment of any residual space as a result of the removal of car-parking spaces shall be agreed with the planning authority.
 - (d) The developer shall provide cycle parking spaces and associated facilities, including facilities for showers, changing, and locker storage, the quantum and layout of which shall be agreed with the planning authority.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity and to encourage the use of sustainable modes of transport.

3. The mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report (EIAR) submitted with this application, as set out in Chapter 17 of the EIAR, shall be carried out in full, except as may be otherwise required by conditions attached to this permission.

Reason: In the interests of clarity and the protection of the environment during the construction and operational phases of the development.

4. Details of the materials, colours and textures of all the external finishes to the proposed development shall be in accordance with the details submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

5. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. The lighting scheme shall incorporate the EIAR mitigations measures for bats.

Reason: In the interests of amenity, public safety, and nature conservation.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual amenity.

7. The following shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development:
- (a) Design details of the junction onto Saint John's Road West to comply with the Lucan to City Centre Core Bus Corridor Scheme and visibility standards in accordance with the Traffic Signs Manual, as published by the Department of Transport.
 - (b) A swept path analysis showing proposals for access to the proposed substations.

Reason: In the interests of orderly development and traffic safety.

8. Prior to the occupation of the development, a finalised Workplace Travel Plan shall be submitted to, and agreed in writing with, the planning authority. This plan shall include modal shift targets which reflect the reduced on-site car parking provision (as per condition number 2 of this decision) and shall provide for incentives to encourage the use of public transport, cycling, walking and car-sharing, and to manage and regulate the extent of parking.

Reason: To encourage the use of sustainable modes of transport.

9. 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 interests of public health and surface water management.

10. The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

11. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

12. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness and these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at site offices at all times.

Reason: In the interest of sustainable waste management.

13. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development with measures to reflect mitigation described in the submitted EIAR for the application, in addition to the following:
- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Location of access points to the site for any construction related activity;
 - (c) Location of areas for construction site offices and staff facilities;
 - (d) Details of site security fencing and hoardings;
 - (e) Details of on-site car parking facilities for site workers during the course of construction;
 - (f) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
 - (g) Proposals to facilitate servicing requirements for the overall site during construction;
 - (h) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (i) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
 - (j) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
 - (k) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

- (l) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (m) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (n) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (o) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety.

14. Site development and building works shall be carried out only between the hours of 0700 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.

15. (a) No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

- (b) The windows to the proposed units shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

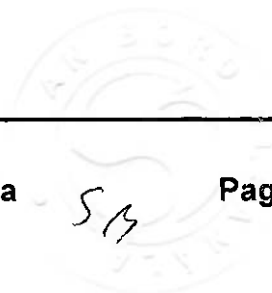
Reason: In the interest of visual amenity.

16. (a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally-constituted management company.
- (b) Details of the legally-constituted management company contract, and drawings/particulars describing the parts of the development for which the legally-constituted management company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the units are made available for occupation. The management scheme shall provide adequate measures for the future maintenance of public open spaces, roads and communal areas.

Reason: To provide for the satisfactory future maintenance of the development.

17. The hotel roof terrace shall not be used for any noise generating events, including amplified music or other specific entertainment noise emissions, during the opening hours of the Royal Hospital Kilmainham gardens. Measures for control and monitoring shall be agreed in writing with the planning authority prior to commencement of development.

Reason: To protect the setting and amenity value of the Royal Hospital Kilmainham site.



18. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavations works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

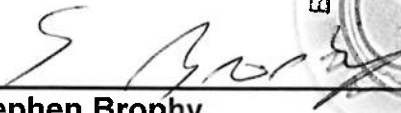
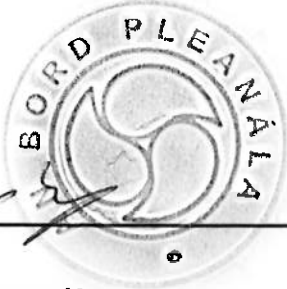
Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any archaeological remains that may exist within the site.

19. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security, or part thereof, to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

20. 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.

Stephen Brophy

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 31st day of *January* 2024.