



An
Bord
Pleanála

Inspector's Report

ABP-312618-22

Development

Demolition of bathroom block and reconfiguration of existing services area to provide off street waiting area, single storey bathroom block, service yard with new escape stairs and new boundary wall, replacement of existing entrance ramp and doors, the provision of a Medically Supervised Injecting Facility (MSIF) at existing vacant basement level, along with other alterations and works.

Location

13/14, Merchant's Quay (Riverbank Building), Dublin 8, D08 KT61

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4121/18

Applicant(s)

Merchant's Quay Ireland (Homeless & Drugs Services)

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

Third Party vs. Refusal

Appellant(s)

Merchant's Quay Ireland (Homeless & Drugs Services)

Observer(s)

1. James Lyster
2. Jeff Sheridan
3. Carly Wosser
4. Sandra Hughes
5. Temple Inns Limited
6. David Reed
7. Martina Bradley
8. Brian McDevitt
9. Stacey O'Callaghan
10. The Morgan Hotel
11. Porterhouse Group
12. Martin Keane
13. Aisling Carabini
14. Elizabeth O'Connor
15. Joe Hynes
16. Licensed Vintners Association
17. Department of Health
18. Failte Ireland
19. Liffey Quays Residents and
Traders Association
20. Michael O'Reilly
21. Jade McCann
22. Nuala Freeman
23. Investi Limited
24. St Audoen's National School Board
of Management
25. Cllr. Ciaran Perry
26. The Temple Bar Company
27. Cllr. Michael Pidgeon

28. QEC Ltd. t/a Circle K
29. Liam O'Farrell
30. Martin Doyle & Others
31. Eoin O'Donoghue
32. Abbey Group
33. Health Service Executive (HSE)
34. Brian McCarthy
35. Niamh Kelly
36. Brendan Courtney
37. Mary Keating
38. Jessica McGrane
39. Ferrys Solicitors
40. Carla Duggan
41. Liz O'Connor
42. Margaret Cullen
43. Evelina Cseke
44. Nick Davern
45. Philip McDonnell
46. Gayle Cullen Doyle
47. John J. Cooke and Co. Ltd.
48. Michael Ryan
49. Derek Dennison
50. The Porter House Group
51. Pat Coyne & Others
52. Niamh O'Brien

Date of Site Inspections

27th of May 2022, 15th of June 2022,
and 6th of September 2022.

Inspector

Stephen Ward

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1.0 Introduction

- 1.1. This case involves the reconsideration of a previous case (ABP Ref. No. 305215-19) under which the Board previously issued a decision to grant permission on the 23rd of December 2019. Following an application for judicial review, that decision was quashed by the High Court Order perfected on the 2nd of December 2021. The appeal was subsequently remitted to the Board for reconsideration. Parties to the appeal have been notified of the remittal and have been invited to make further submissions/observations. This report outlines my *de novo* assessment of the appeal case.

2.0 Site Location and Description

- 2.1. The site is located at Merchant's Quay on the southern side of the River Liffey. It is distanced approximately 1 kilometre west of O'Connell Bridge and is part of a larger mixed-use block framed by the quays to the north, Winetavern Street to the east, Cook Street to the south, and Lower Bridge Street to the west.
- 2.2. To the north of the site, Merchant's Quay is a heavily trafficked westbound route with dedicated lanes for cars, bicycles, and buses, along with associated footpaths, parking and loading requirements. The site is bounded to the west by the Four Courts Hostel and a multi-storey car park. To the east is a large Franciscan Friary site containing its church and associated buildings. There is a residential apartment block directly south of the site, while St Audoen's National School is further to the southwest along Cook St. In the wider area, the substantial sites at Dublin City Council, Christ Church Cathedral, and St Audoen's Church/Park account for a significant portion of land use. There is also a strong presence of various commercial uses and residential streets.
- 2.3. The site itself contains the existing Riverbank Open Access Centre, which currently provides a range of services to homeless clients. It is a 3-storey over basement building with a single storey block on its eastern side. The basement area currently houses plant and storage space, while the ground floor level comprises a large dining / drop-in space and a range of office, kitchen, and shower/toilet facilities. The upper floors mainly comprise offices and healthcare consulting rooms.

3.0 Proposed Development

- 3.1. The background to the proposed development lies in the enactment of the Misuse of Drugs (Supervised Injecting Facilities) Act 2017 ('the Act of 2017'), which allows for the licensing of a medically supervised injecting facility, defined as '*a facility operated by a licence holder where authorised users may consume drugs by injection*'. The legislation was enacted '*...for the purposes of reducing harm to people who inject drugs in public places; to reduce the incidence of drug injection and drug related litter in public places and thereby to enhance the public amenity for the wider community.*' Following a tender process initiated by the HSE, Merchant's Quay Ireland (MQI) was chosen as the preferred bidder to operate this service on an initial 18-month pilot basis.
- 3.2. In summary, the proposed development involves internal and external alterations to the existing building/site, including the provision of the Medically Supervised Injection Facility (MSIF) at basement level. The following elements are included:
- demolition of existing bathroom block (c.51m²) and reconfiguration of existing services area to provide new off-street waiting area at ground floor level on eastern boundary with new access gate off Merchant's Quay and pergola canopy over
 - new single storey bathroom block (c.77.5m² GFA), reconfigured service yard with new escape stairs and new boundary wall to southern elevation and smoking area along eastern boundary
 - demolition of existing entrance ramp and canopy on front elevation to Merchant's Quay to provide a new single storey enclosed ramp entrance (c.24.7m²) and new entrance doors
 - the provision of a Medically Supervised Injecting Facility (MSIF) at existing vacant basement level (c.387m² GFA). 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 7 no. injecting booths), after care area, ancillary bathrooms, plant space and circulation areas

- demolition of existing water tank at roof level and redundant chimney and gas skid enclosure at western boundary
 - new backlit stainless-steel signage (c.5m²) on northern & eastern elevation, replacement glazing and general upgrade of materials/finishes on all elevations.
- 3.3. The MSIF will include 7 no. injection booths, along with associated staff space and assessment / after-care area and will be integrated with the other services currently provided in the Open Access Centre (OAC). It will operate three sessions Monday to Friday (i.e. 06:00 – 10:00, 14:30 – 17:30, & 19:00 – 21:30) and two sessions on Saturday & Sunday (i.e. 06:00 – 10:00, & 15:30 – 21:00).
- 3.4. In addition to the normal drawings and documentation requirements, the application is supported by the following:
- Planning Report
 - Community Engagement & Liaison Plan
 - Operations Plan
 - HSE Tender documents for the provision of a MSIF
 - Planning Stage Mechanical & Electrical Sustainability Statement
 - Architectural Design Statement
 - Civil & Structural Planning Report
 - HSE Leaflet (FAQs) on MSIFs
 - MQI Community Engagement Team leaflet.

4.0 Planning Authority Decision

4.1. Decision

By order dated the 25th of July 2019, Dublin City Council (DCC) issued a decision to refuse permission for the following reason:

Having regard to the nature and scale of the proposed development, the overconcentration of social support services in the Dublin 8 area and the lack of a

robust policing plan and public realm plan, it is considered that the proposed development would undermine the existing local economy, in particular the growing tourism economy, have an injurious impact on the local residential community and its residential amenities, and would hinder the future regeneration of the area. Hence, the proposed development would be in contravention of the Dublin City Development Plan 2016-2022, and would, therefore be contrary to the proper planning and sustainable development of the area.

4.2. Planning Authority Reports

4.2.1. Planning Report

The assessment outlined in the initial Planner's report (26th November 2018) concluded that the façade upgrade would enhance the aesthetic of the building and that there were no objections to the other alterations, demolition, and extension works proposed.

The assessment of the proposed MSIF can be summarised as follows:

- The revised access arrangements will separate user groups and will aid in the overall management of the facility. However, the applicant should demonstrate that the proposed queuing area is sufficient to accommodate each of the user groups.
- The applicant's Operations Plan is noted in relation to building capacity, historical client numbers, and surveyed interest in the facility. However, further evidence-based assessment is required in relation to the likely number of users and the catchment area of the facility.
- The extensive opening hours exceed the licence requirements and need to be justified with reference to international examples.
- Clarification is required on user numbers and duration of visits in order to assess queuing facilities and associated impacts on the public realm.
- No information has been submitted on the management of operations during the construction phase.

- A policing plan should be submitted with specific reference to the proposed MSIF use.
- Additional specific management details are required in accordance with Policy QH30 of the Development Plan.
- In accordance with Section 16.12 of the Development Plan, the applicant should be requested to submit a detailed assessment of homeless accommodation/support services in the area to demonstrate that the proposed development would not impact on the sustainability of the area.
- Further information should be requested on the above issues (see section 4.2.3 below for further details).

4.2.2. Other Technical Reports

Engineering Department – Drainage Division: No objections subject to standard conditions.

City Archaeologist: The site is located within the border of the Zone of Archaeological Constraint for the Recorded Monument DU018-020 (Dublin City). It is recommended that a condition requiring archaeological monitoring is applied.

4.2.3. Further Information

Consistent with the DCC Planner's recommendation, a further information request was issued on the 29th of November 2018. In summary, the applicant was requested to submit the following:

- 1) An assessment, in accordance with section 16.12 of the Development Plan, to demonstrate that the development will not result in an overconcentration of such facilities or undermine the sustainability of the neighbourhood.
- 2) A detailed Operational Management Plan (OMP), as per Policy QH30 of the Development Plan, to include details of predicted client numbers and catchment area, duration and frequency of visits, regulation of client numbers, justification for the hours of operation, off street queuing capacity, a Public Realm Management Strategy, a Policing Plan, and an operational plan for the construction phase. The OMP is to include comparison with existing international facilities.

- 4.2.4. The applicant responded to the Further Information request on the 28th of August 2019, including a Public Realm & Community Engagement Plan, Architectural Design Statement, and Operations Plan.
- 4.2.5. The response to point 1 of the further information request includes 3 maps identifying 39 no. social facilities within 500 metres of the application site, 17 of which are homeless facilities, and 4 of which provide addiction services. It highlights that not all users of MSIFs are homeless, that MQI already operate homeless & drugs services at this location, that the night café would be relocated to reduce the active uses, that no other MSIF currently exists, that the only other Needle Exchange Programme in Dublin is 800 metres away, and that the site has been selected by the HSE as an appropriate location for the service. It concludes that the proposed facility is unique and would not constitute an overconcentration of addiction services in the area.
- 4.2.6. The response to point 2 of the further information request can be summarised as follows:
- Surveys predict that 60-100 clients would use the MSIF daily, with the busiest times expected to be before 9am and after 8pm. It contends that the majority of clients who intend to use the MSIF already use the existing MQI services. Regarding the catchment area, it contends that research indicates success in the location of MSIFs within the city's main areas for drug-related behaviour, and that people would not travel to use a MSIF. It concludes that the site is an appropriate location given the established uses and its inner-city convenience.
 - A maximum 20-minute booth stay for users will facilitate at least 21 injections per hour, resulting in 63 injections prior to 9am and 31 injections after 8pm.
 - The building has been designed to facilitate separate access/egress for the 3 different user groups and MQI will regulate the flow of clients efficiently.
 - The proposed opening hours are in line with international experience, HSE requirements, the needs of prospective users, and the current opening hours of the OAC. The hours would also coincide with school start/finish times, thus reducing the level of exposure that schoolchildren currently face.
 - The queuing area can accommodate c. 30 persons and will be discreetly located in a gated off-street area. It will be monitored and managed to ensure

that there will be no congregating or associated impacts on the public realm, and overflow areas will be available in the unlikely event they are required.

- A Public Realm and Community Engagement Plan is included which outlines the roles of MQI, including engagement with community stakeholders; involvement of the Community Engagement team, including 7 people and 4 selected patrol routes; a Community Liaison Officer; an Outreach Team for the most vulnerable clients; drug litter collection and disposal; active engagement with users in public areas; addressing challenging behaviour; monitoring and maintenance outside the building; tackling issues such as loitering and public injecting; working with Gardai; and involvement in community based initiatives. Based on international evidence, the response contends that MSIFs do not increase drug use, drug dealing, crime, or drug litter in the areas they are located. A lighting plan is also included to ensure a well-lit public realm around the facility.
- MQI have liaised with An Garda Síochána (AGS) regarding the request for a Policing Plan. A letter is included from the Detective Superintendent of the Garda National Drugs and Organised Crime Unit. It outlines legal advice that it would not be appropriate for an independent impartial policing service to be seen to influence the outcome of the planning process and that the creation of a policing plan for the facility would be inappropriate at this stage. In the event of a grant of permission, AGS may then prepare a policing plan based on a collaborative approach with all relevant stakeholders.
- The construction process will be phased over a period of 6-8 months and will enable MQI to provide their current services with minimal disruption.

4.2.7. The further information response includes details of a team visit to an MSIF in Paris, France. It contends that it has a similar site context to the appeal site, being located near many attractions, commercial properties, residences, and civic/community uses, while also serving a high concentration of people in need. The report asserts that the facility has not had an adverse impact on tourism, the local economy, public realm, or property values. An international study of other MSIFs (in Sydney, Vancouver, Toronto, Copenhagen, Strasbourg, and Barcelona) has also been completed to highlight that most MSIFs are located within the centre of cities. It

concludes that 74% are located in town centres and/or near a major travel hub (54%). Some 48% are within an established street-based drug scene, 57% are co-located with other similar services, and only a minority of 30% are standalone programmes.

4.2.8. Reports on the Further Information

The assessment outlined in the final DCC Planner's report (25th July 2019) can be summarised as follows:

- The lack of precedent for such facilities in Ireland results in levels of uncertainty about the operational impact of the development. If permitted, it would be the only such facility in the country and must, therefore, be considered a national facility which would serve the wider city and country.
- The planning authority is not satisfied that the proposed development can be accommodated in the area without contravening the approach as set out in sections 16.12 & 12.4 of the Development Plan. This additional use in an area which already accommodates a disproportionate amount of institutional hostel accommodation, homeless accommodation, and social support institutions, would result in an overconcentration of such services, and would undermine the sustainability of the neighbourhood.
- The applicant's international evidence of reduced drug litter and public injection would be welcomed and would certainly be beneficial to the tourism, residential, school, and recreational uses in the area. The international examples of the concentration of such facilities close to the end user in established drug scenes are also noted and warranted, but this area is significantly more than merely an area with 'already present drug scenes'.
- The area is a residential community, an employment hub, an area for recreation, and a tourist hotspot. Policy CEE12 of the Development Plan seeks to promote Dublin as a world class tourist destination and the Liberties LAP aims to improve the quality of life in the area. The proposed development would contravene these stated policies.
- MQI have not precisely clarified user numbers. In any case, the numbers have the potential to overspill onto the public realm and impact on public safety.

- Planning authority concerns about the combined impact of the development and other similar services on the existing facilities and amenities in the area have not been assuaged.
- Although 18 months may be a necessary period to carry out the trial, it is also sufficient to contribute to a significant deterioration in local amenities.
- There are serious concerns about the effectiveness of management plans, in particular the preventative measures outlined in section 9 of the Good Neighbour Policy.
- There are major reservations about the lack of a Policing Plan, which leaves a high level of uncertainty about policing a facility with a catchment across the city and beyond.
- It is recommended that permission be refused, and this forms the basis of the DCC decision.

4.3. **Prescribed Bodies**

TII: Recommends that a condition should apply for the Section 49 Supplementary Development Contribution Scheme (Luas Cross City).

Failte Ireland: The submission highlights the tourism attractions in the area and the importance of tourism to the local economy. It recognises the need for this type of facility and does not object to the principle of a MSIF. However, it contends tht the concerns of local tourism businesses should be given full consideration.

4.4. **Third Party Observations**

A total of 99 no. 3rd party submissions were received by the planning authority. The issues raised are largely covered in the observations on the appeal (see section 7.3 of this report) and can be summarised as follows:

- An excessive overconcentration of homeless and drug-related facilities in the area, which perpetuates social disadvantage, conflicts with Development Plan policy, and has the potential to undermine the sustainability of the area.
- Increased crime and drug-related anti-social behaviour.

- Proximity to St Audoen's National School and the adverse amenity and safety impacts for the school, children, and neighbours.
- Adverse impacts on tourism having regard to the proximity of several attractions and its importance to the economy.
- Adverse impacts and local businesses and their staff.
- General adverse impacts on the amenity of surrounding properties by reason of noise, disturbance, traffic, and anti-social behaviour.
- Inadequate information in relation to operation, policing, and security.
- Inadequate health policy response to the drug problem in general.

5.0 Planning History

ABP Ref. PL29S. 305215: On the 23rd of December 2019, the Board made a decision to grant permission for the subject development. Following an application for judicial review, this decision was quashed by the High Court Order perfected on the 2nd of December 2021. The appeal was subsequently remitted to the Board for reconsideration and the current appeal case constitutes the reassessment required under this court order.

P.A. Reg. Ref. 0392/17: Under this Section 5 application, The Temple Bar Company sought a declaration as to whether the use of the premises of Merchants Quay Ireland at Riverbank Court, Merchants Quay Dublin 8, as a supervised injecting facility is or is not development and if it is development, whether it is exempted development. By Order dated 6th of November 2017, DCC decided that the proposed development is not exempt from the requirement to obtain planning permission.

ABP Ref. PL29S.228820 (P.A. Reg. Ref 5850/07): In October 2008, after DCC had decided to grant permission for change of use from children's court to day-care centre for social services, dining, administration and other healthcare services, the Board decided to remove Condition no. 9 (removing the requirement for an annual report/plan for the 'Streetlink' services). Condition no. 2 was amended by omitting a temporary 4-year permission but requiring details to be agreed in relation to an off-street waiting area, the installation of CCTV, and details of the StreetLink service; requiring the relocation of the bus-stop away from the building entrance; and

requiring the availability of the waiting area and centre to users at certain times. Condition no. 3 was amended to require the cessation of other existing facilities at Cook Street and Winetavern Street.

6.0 Policy Context

6.1. National Policy

- 6.1.1. 'Reducing Harm, Supporting Recovery – A health-led response to drug and alcohol use in Ireland 2017-2025' sets out the Government's integrated strategy to address the harm caused by substance misuse in our society up to 2025. It highlights a recognised problem with street injecting in Ireland, particularly in Dublin City centre, which poses a significant health risk for people who use drugs, and results in discarded needles which presents a public health risk to others.
- 6.1.2. Objective 2.2.29 aims to provide enhanced clinical support to people who inject drugs and to mitigate the issue of public injecting. This is to be delivered by establishing a pilot supervised injecting facility and evaluating the effectiveness of the initiative.

6.2. Development Plan

- 6.2.1. The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z5 City Centre', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and integrity*'. Section 14.8.5 of the Development Plan outlines that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night.
- 6.2.2. Section 5.5.11 sets out policy for Homeless Services stating: *The City Council and other statutory agencies provide appropriate accommodation and work together to improve the range and quality of services available for homeless persons. An over-concentration of institutional accommodation can have an undue impact on*

residential communities and on the inner city in particular. A co-ordinated approach to the provision and management of these facilities as well as their spread across the city is important.

6.2.3. Policy **QH30** aims to ensure that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 500-metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility.

6.2.4. Chapter 16 outlines Development Standards for various types of development. Section 16.12 deals with Institutions/Hostels and Support Services and states that an over-concentration of institutional hostel accommodation, homeless accommodation and social support institutions can potentially undermine the sustainability of a neighbourhood and so there must be an appropriate balance in the further provision of new developments and/or expansion of such existing uses in electoral wards which already accommodate a disproportionate quantum. Accordingly, there shall be an onus on all applicants to indicate that any proposal for homeless accommodation or support services will not result in an undue concentration of such uses, nor undermine the existing local economy, the resident community, the residential amenity, or the regeneration of the area. All applications for such uses shall include:

- A map of all homeless and other social support services within a 500m radius of application site
- A statement on catchment area, i.e. whether proposal is to serve local or regional demand
- A statement regarding management of the service/facility.

6.2.5. Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. The site is located within a designated 'Conservation Area' which stretches along the Liffey Quays. The adjoining buildings

to the east and west along the Quay are Protected Structures. In summary, relevant policies include:

CHC1 Seek the preservation of the built heritage of the city.

CHC2 Ensure that the special interest of protected structures is protected.

CHC4 To protect the special interest and character of all Conservation Areas.

6.3. Liberties Local Area Plan

This LAP was published in 2009 and aimed to achieve the social, economic and physical regeneration of the area by providing a co-coordinated approach to the development of key sites and by exploiting opportunities for the provision of new community infrastructure, new open spaces and public realm improvements. The lifetime of the LAP was extended to May 2020, after which it expired.

6.4. Natural Heritage Designations

The appeal site is located c. 3.5km from the South Dublin Bay and River Tolka Estuary SPA and c. 4km from the South Dublin Bay SAC. There are other Natura 2000 sites in the wider Dublin Bay area.

6.5. EIA Screening

The proposed development involves relatively minor extensions and alterations to an existing building in a serviced and built-up part of the city. Having regard to the existing development on site, the nature and limited scale of the proposed development, and the absence of any direct connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The DCC decision to refuse permission has been appealed by the applicant. The appeal sets out background information relating to the history of services provided through the Merchant's Quay project, the enactment of legislation to provide for MSIFs, and the support for MSIFs in the National Drug Strategy. A cross-sector working group was established to design a MSIF programme, which identified the inner-city centre as an appropriate location. Following a HSE tender process, MQI were selected to operate this service at the Riverbank premises on an initial 18-month pilot basis. The appeal contends that the building meets the prescribed criteria as outlined in the HSE tender, particularly its location within the inner city where a client base already exists.
- 7.1.2. The appeal is accompanied by Appendix A (a study entitled *Public Health and Public Order Outcomes Associated with Supervised Drug Consumption Facilities: A Systematic Review*) and Appendix B (a letter of advice prepared by Eamon Galligan – Senior Counsel). The grounds of appeal can be summarised under the following headings:

Existing Environment

- MQI has only one service present within 500m of the site, which is for the most marginalised residents of the area. While DCC has considered its obligations to businesses, residents, and tourists, it has failed to consider its obligations to the marginalised drug users that would benefit from a MSIF.
- Increased homelessness in Dublin 8 has resulted in increased drug problems and it is entirely misguided to refuse permission on the basis of an overconcentration of social support services.
- The facility would prevent drug/health problems and would enable easy access to associated services in the Riverbank building.
- It would reduce public injecting and drug litter and the visual improvement would be to the benefit of residents, businesses, and tourists.

Development Plan Policy

- The planning authority has given no consideration to Development Plan provisions which aim to support marginalised and vulnerable residents.
- The Core Strategy refers to Goal 11 of the Local Economic and Community Plan (LECP), which aims to '*Tackle the causes and consequences of the drugs crisis and significantly reduce substance misuse across the city through quality, evidence-informed actions*'.
- Section 12.5.5 outlines that new strategic social infrastructure should complement the range of neighbouring facilities already in the area.
- Policy SN15 aims to ensure the optimum use of community facilities and that high-quality facilities are accessible to all.
- Policy SN22 aims to facilitate healthcare facilities in accordance with the requirements of healthcare authorities and to facilitate the consolidation or enhancement of these facilities.
- The planning authority fails to include Objective 2 of the Liberties LAP, which aims to provide an appropriate social and community infrastructure.
- The proposal directly accords with the above policies, which the planning authority has failed to consider in its assessment.

Dublin 8 in context

- The concentration of social support services needs to be seen in the context of the ongoing homeless crisis. There are over 10,000 people homeless, a high proportion of which have addiction, medical, and mental health issues, resulting in greater public injecting and needs for support services. D1, D7, and D8 have a reported 3,001 emergency accommodation beds and the areas take 42% of all homeless people in the county.
- International experience and evidence shows that MSIFs need to be located in areas like D8 where potential clients are based.
- The DCC planning officer's contention that it would be a national facility is not based on fact and does not consider the detailed evidence presented by the applicant regarding the client numbers and catchment area. International precedent and surveys have established that people will not travel long distances and the proposed facility would serve only a local catchment.

- The appeal outlines details of the location, numbers of clients, and hours of operation of the facility. It contends that this is consistent with both the requirements of the HSE tender and international practice and requests the Board to consider this evidence rather than the unfounded assertions of the DCC planning officer.
- If permission is granted, the applicant is also committed to relocating the Night Café to reduce the extent of active uses on site.

Policing Plan

- The applicant has received legal advice (Appendix B of the appeal) that the request for a detailed policing plan to be prepared and be publicly available prior to any permission being granted would be *ultra vires* and invalid.
- The Board is asked to consider the fact that An Garda Síochána (AGS) is a key stakeholder in the delivery of the facility and has/will engage with the Government and the HSE at all stages, as confirmed in the Garda letter submitted as further information.
- The DCC planning reports make no reference to a meeting with high level Garda representatives, wherein it was reiterated that a policing plan should not be publicly available (for security purposes) and would be premature in the absence of a grant of permission.
- The planning officers of DCC are not qualified to judge a policing plan, which is not part of Development Plan policy.
- For these reasons, it is simply not credible to cite the omission of a policing plan at this stage as a reason to refuse permission.

Tourism Economy & Residential Amenity

- International evidence clearly demonstrates that MSIFs improve the public realm of areas affected by a high proportion of drug users. The Board is referred to the study appended to the appeal (Appendix A). It outlines that five studies have demonstrated the effectiveness of such facilities in addressing public disorder, and six studies found no change in drug-related crime.
- The Board should rely on this valid international evidence and the planning authority's assertions about injurious impacts on amenities are unfounded.

- The facility requires an inner-city location, and such locations also include all the historic and tourist sites that are a feature of capital cities. This is consistent with the location of MSIFs around the world and there is no documented evidence of adverse impacts on the tourist industry.

Active Community Engagement and Public Realm Management

- The impact of the MSIF on the public realm and community is one of the applicant's core priorities and measures have already been put in place to ensure successful integration.
- The community engagement team has been in place for a number of years, and it patrols specific locations and routes around the facility. This will continue and will be reviewed and updated when the MSIF is operational.
- The impacts on the local area would be alleviated by the proposed development and the associated work of the Community Engagement Team.
- The upgrades to the building will improve the physical attributes of the area and public realm, both during daytime and night-time.

Management and Review

- The Board may restrict the operational period of any permission and the HSE has specified that the project should operate on an 18-month pilot basis.
- A senior manager will oversee the day-to-day running of the facility and will report to an Operational Governance Committee (OGC), including monthly updates on specific evaluation areas. The OGC will regularly report to a Monitoring Committee chaired by the HSE and including representation from the Department of Health, An Garda Síochána, DCC, UISCE, and others.
- An external evaluation of the pilot phase will be carried out by an independent agent and will be required to demonstrate that it succeeded in accessing people engaged in high-risk behaviours; did not result in an increase in the overall frequency of injecting; provided safer injection practices; and provided a benefit to the local area including a reduction in overdoses.
- The operation of the facility will be entirely results driven and permission should be granted on this basis.

Conclusion

- It is submitted that the appeal has addressed the concerns raised in the decision to refuse permission and the Board is requested to have regard to all supporting material submitted.
- The Board is reminded that the Minister for Health has power to impose detailed conditions relating to medical supervision and clinical governance and that these are not matters within the scope of planning control.

7.2. Planning Authority Response

The DCC response to the appeal reiterates its very serious concerns about the likely detrimental impact on the vitality and viability of this part of the historic city core and the residential and neighbourhood amenities of the area. The response to several points raised in the appeal can be summarised as follows:

- The applicants were requested to provide a robust policing plan in conjunction with An Garda Síochána (AGS) but there was no requirement for AGS to provide any detail which would compromise security.
- The policing plan is required to provide certainty in relation to the management of the facility and the protection of the amenities of the area in accordance with Policy QH30 of the Development Plan.
- In the absence of a robust policing plan and a rigorous management plan for the public realm, DCC is not satisfied that the development can be accommodated without undermining the existing economy, the local residential community, and the regeneration of the area.
- The meeting held on 25th of April 2019 was held to provide clarity on the further information request and it is not custom or practice to consider such meetings in accordance with Section 247 of the Act.
- The proposed development would result in a significant over concentration of the broad suite of social support services in the area, would negate against the preservation of the area as a sustainable neighbourhood, and would impact on the vitality and viability of the area and its tourism offer. The planning authority remains of the view that it would contravene the stated

policies of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

7.3. Observations

During the initial consideration of the appeal (i.e. under ABP Ref. 305215-19) a total of 52 no. valid submissions were received, some of which contain multiple signatories. The submissions were mainly made on behalf of local residents, businesses and community interests, including St Audoen's National School. The content of the submissions can be summarised under the following headings.

Adverse impacts on local businesses, residents and the community

- The intensified use of the facility raises safety concerns for employees and customers, which raises difficulties with staff retention and revenue.
- The facility is close to the Central Business District and should not be located close to extensive business and tourism venues.
- There will be an increase in drug-dealing and associated criminality, public order issues, and anti-social behaviour.
- The facility will damage the tourism economy, particularly given the proximity to popular tourist destinations/routes.
- The extensive hours of operation will cause severe impacts and could be extended in the future.
- There has been significant tourism growth in recent years but there are uncertain times ahead and the impact of the development on tourism and related businesses must be taken into account.
- The venue is unsuitable and will result in over-crowding and associated anti-social behaviour.
- There has been an increasing intensity of services in the existing building and the proposed MSIF would be a further serious escalation in use and associated adverse impacts on quality of life in the area.

- The MQI site has become a main centre for drug users in the city. It is likely that the trial period will be extended, and other MSIFs will not be developed elsewhere.
- This strategic location in an area of residential, tourism, educational, and regeneration uses is unsuitable.

International evidence

- Several reports and studies are referenced from Canada and Australia which outline that crime and anti-social behaviour is prevalent in areas where such facilities are located, resulting in personal safety concerns.
- Analyses of data provided from different SIFs outlines that there is no reason to conclude that there is a significant reduction in the overall rates of public injecting (Simon Fraser University, 2011).
- The international examples cited by the applicant are not comparable to the proposed site and the Paris facility created serious public safety concerns.
- Various European cities have located MSIFs in less sensitive areas, including semi-industrial areas and hospitals.
- In Philadelphia, United States, several potential sites were appraised using a formula to compare suitability.
- In the City of London (Canada), a systematic assessment of dozens of locations was completed for the consideration of their first injection facility. It established comprehensive evaluation criteria which is lacking in this case.
- The sources and results of some studies/reports which support the impact of MSIFs are questionable. Analyses of MSIFs in Vancouver and Sydney do not provide conclusive evidence of their success.
- Reports from Germany indicate that MSIFs attract a 'drug scene'.

Policing Plan and management

- The lack of a policing plan raises concerns about public safety and increased drug-related activity.
- It is questionable if there will be adequate policing resources available.

- Inadequate estimates of the likely number of users, including multiple attendances per day, raises deep concerns about the ability to manage the throughput of its services.
- The contradictory positions of the planning authority and An Garda Síochána regarding the requirement for a policing plan is a matter outside the scope of the planning system and undermines the basis for the operation of the facility.
- MQI personnel have very limited powers to control behaviour in the surrounding area and this is likely to worsen if the application is granted.
- The ambiguity of governing legislation would effectively decriminalise drug possession and lead to increased activity and associated problems.
- The applicant makes several references to the involvement of An Garda Síochána and it is reasonable to expect that the planning authority would require confirmation and clarification of policing plans.
- The ambiguous legislation and policing requirements highlight the legal problem presented by the MSIF proposal.
- The community deserves to know the precise clarity of any policing plan.
- MQI consistently fail to engage with local residents and traders in any meaningful way.
- The appeal has not addressed the outstanding concerns regarding policing and controlling the public realm.
- No debate has taken place within DCC policing forums regarding the policing implications of MSIFs.
- If the development proceeds, a detailed policing plan is an absolute requirement and could be provided in confidence.
- There are concerns about MQI's ability to manage such a complex project.
- The submission from The Temple Bar Company includes a report from a former Assistant Commissioner of AGS and outlines concerns in relation to increased drug use and associated criminality, and the absence of adequate police resources to control such a facility in the city centre.

Impacts on St Audoen's School

- Children should not have to witness the drug-taking and related criminal and anti-social activities associated with the facility.
- The proposed development impacts on children's rights to education.
- There is already an oversaturation of addiction services in the area and drug culture has been normalised. The proposed development will validate this culture and endanger the development and safety of children.
- Comparisons are drawn to restrictions on the locations of fast-food outlets and the advertising of alcohol in proximity to schools. On this basis, it is submitted that MSIFs should not be allowed.
- Social infrastructure investment in the area should be focused on increased amenities and play areas.
- Submissions from parents, school staff, and the Deputy Principal highlight concerns in relation to anti-social behaviour, the proximity of the school, the lack of a policing plan, and the overconcentration of such services in the area.
- In addition to the foregoing, a submission from the Principal and the Board of Management highlights the following:
 - Non-compliance with the conditions of the previous permission (ABP Ref. PL 29S.228820) and no permission for the use of the premises as an overnight facility. There are concerns that the applicant will continue to disregard planning legislation and conditions.
 - Inadequate patrol of the area by the applicant.
 - Examples from a logbook of drug-related incidents that have occurred in the vicinity of the school.
 - Commentary from a Consultant Psychologist, Child Therapist, and Child Psychotherapist on the potential adverse impacts of exposure to drug use on child welfare and development.
 - The absence of a child impact assessment or consultation with children as was discussed with the Children's Ombudsman.

- The predicted increase in intensity of drug activity at school opening and closing times when children will travel to the area by foot.
- The absence of adequate policing, management, and engagement.

Overconcentration of social services

- There is an over concentration of social services in the area, including those related to homelessness and addiction.
- The Dublin 8 area is accommodating an unfair share of the city's problems.
- Development Plan policy requires applications to demonstrate that there will not be an undue concentration of services or an undermining of the local area.
- The facility may impact on the safety of those using the surrounding services.
- The services provided by the applicant draws from other parts of the city, thereby creating/exacerbating the drug problem.

Alternatives

- Concerns are raised that only one location has been considered and that there may be alternative solutions.
- The HSE tender requirement for an inner-city location should have no bearing on proper planning and it should be noted that the HSE observations to DCC opposed the planning application.
- The application does not include accurate data to demonstrate that this is the main area of the city for drug-related behaviour.
- It would be more appropriate to locate such facilities at multiple locations.
- Circulation of illegal and dangerous substances should be at secure and controlled facilities or specialist dedicated facilities.
- Mobile consumption units are prevalent in many cities and may be successful in serving wider bases and avoiding concentrations of users.
- A public discussion is required on various solutions to tackle the national drug problem, which must focus on the issues of demand and education, along with sufficient funding for detox and rehabilitation facilities.

- The success of MSIFs is not proven and must be questioned.
- The existing services at MQI should be closed or reduced.

Traffic safety

- The site adjoins a busy road and there will be obvious traffic safety concerns given that many of the clients will be intoxicated.
- Client spill over has the potential to impact on pedestrians, cyclists, and the quality bus corridor.

Development Plan policy

- The Z5 zoning does not allow a 'safe injecting facility'. It is an entirely new category which should await the preparation of a new plan or a material contravention of the existing plan.
- The facility cannot be considered under the category '*building for the health, safety, and welfare of the public, community facility, medical and related consultants, public service installation*'. It is for the injection of illegal and dangerous drugs and couldn't be described as medically beneficial or contributing to safety and welfare.
- The proposal conflicts with policies to encourage tourism and residential development in the area.
- The applicant's references to section 12.5.5, SN15, SN22, and the LECP bear no relation to the arguments in favour of MSIFs.

Other concerns

- There is no legislative provision to restrict the period of permission to 18 months.
- It is inaccurate and stigmatising to claim that a high proportion of the 10,000 homeless have addiction, medical, and mental health issues.
- Concerns are raised about the tender process, which did not adequately assess the impacts on the surrounding area and was completed in advance of planning issues being addressed.

Support for the proposal

Two of the observations expressed support for the proposed development on the following basis:

- Existing drug activity already has injurious impacts on the local area and the proposal would undoubtedly improve this situation.
- It is a pilot facility and needs to be established across the city and nationally if it is successful.
- Concerns about increased anti-social behaviour is not supported by international evidence and studies of other MSIFs.
- Additional queuing space is welcomed and will improve the public realm.
- It is inappropriate to treat the proposal as a national facility and there is no evidence to support long-distance travel to such facilities.
- Fáilte Ireland has not objected to the principle of the facility and there is no evidence of adverse impacts on local tourism/businesses.
- The DCC decision flies in the face of the LECP goals/actions to tackle the causes and consequences of the drugs crisis and significantly reduce misuse through quality, evidence-informed actions and to lead the local co-ordination of the National Drugs Strategy.
- Although the trial period is for 18 months, the government has specific provision to withdraw the facility at any time if it is a complete failure.
- Although there is a concentration of services in the area, a degree of colocation is necessary to link social, medical, and housing support services.
- The relocation of the Night café would avoid a net increase in services.
- The concentration of homeless shelters in Dublin 8 has created the demand for services and it is reasonable that services should be concentrated there.
- The DCC interpretation of residential amenity excludes the potential users of the facility as local residents.
- The proposal is supported by action 2.2.29 of the National Drugs Strategy, which aims to mitigate public injecting and to establish a pilot MSIF.

- The facility would improve the existing situation of public injecting which would help to create/maintain a sustainable neighbourhood.

7.4. Prescribed Bodies

7.4.1. A **Department of Health** submission from the Minister of State for Health Promotion and the National Drugs Strategy supports the appeal. The main points raised can be summarised as follows:

- The establishment of a MSIF is a commitment in the 'Programme for a Partnership Government' and is a key action of the national drugs strategy.
- It is a public health response to the harm caused by drug injection, where deaths and overdoses have been concentrated in the city centre.
- MSIFs have been established in many cities and ongoing research aims to expand these facilities in more cities.
- A MSIF will allow users to access a range of other medical and social services and will reduce the negative impacts of public injecting on local communities and businesses.
- It would be established on a pilot basis with reviews after 6 and 18 months to evaluate benefits to users and the local community.
- The submission outlines the legislative remit for MSIFs under the Act of 2017, including the provisions and conditions of issuing a license to operate; exemptions for 'authorised users' of drugs within the facility; and consultation with the HSE. It agrees with the applicant's legal submission that clinical governance and other matters concerning the operation of the facility are not proper matters for consideration under the planning process.
- It is clear that there is a particular problem with street injecting in the city centre, with an estimated 400 users injecting in the public domain. Data from the DRHE confirms that there are 3,000 emergency accommodation beds for homeless people in D1, D7 and D8, with 434 adults in hostel accommodation in D8 alone. The nature and scale of the project is therefore appropriate. The MSIF would not add to the range of services for homeless people in the city centre, rather it enhances and consolidates existing provision. It is a key component of the strategy to reduce homelessness by stabilising users.

- The Minister supports the relocation of the Night Café to allow MQI to focus on enhancing health services for the homeless population.
- QI and the HSE have developed a community engagement plan and the Minister has specifically asked that there be positive engagement with the local national school and local residents.
- The Minister has announced a community fund of €100,000 towards environmental improvements associated with the establishment of a MSIF and supports the enhanced exterior of the building.
- A monitoring committee will oversee the operation and governance and will be chaired by the HSE with relevant stakeholders from the local community and statutory/voluntary services.

7.4.2. A submission from **Failte Ireland** highlights the importance of tourism to Dublin and its projected growth. It highlights the large number of existing tourism attractions and amenities within the area and the potential of the Liberties as a cultural and heritage tourism destination. A key objective of the Liberties LAP is to promote a safe and attractive urban environment and a concern has been raised that tourism objectives could be affected by the proposed development. Local businesses fear that the proposal may encourage crime and anti-social behaviour and DCC considered that it would undermine the growing tourism economy. Failte Ireland recognises the need for this type of facility and does not object in principle. However, the concerns of local tourism businesses should be given full consideration.

7.4.3. The **HSE** supports the appeal, and its observations can be summarised as follows:

- The research carried out by the project working group has clearly indicated the suitability of a city centre location either north or south of the Liffey.
- The group has also visited other European facilities to establish clear guidance on the operation and monitoring of the facility.
- A bespoke tendering process has identified the site as the most appropriate location for the MSIF.
- The proposal would address the existing problem of public injecting, resulting in benefits for both users and the local community.
- The facility will provide a range of other services for users.

- European evidence is that such facilities reach out to the most marginalised groups and there has been no evidence of overdose deaths in such facilities (including those in Canada and Australia).
- Research shows that such facilities result in positive outcomes for users and local communities, and there is no evidence of increased drug use, crime, or users from other areas.

7.5. Further Responses

7.5.1. Following the High Court decision to quash the Board's previous decision (ABP Ref. 302515-19), the appeal was reactivated, and all parties were invited to make further general submissions/observations.

7.5.2. The response from the applicant can be summarised as follows:

- A condition limiting the operation of the MSIF to a period of 18 months would be welcomed. The reason for such a condition should be to allow for a review not only of impacts on residential amenity and public safety, but also the impacts on the school and its pupils.
- An 18-month permission would be consistent with the pilot period and would allow for evaluation in accordance with the stated terms of the tender, which would establish a clear rationale for an 18-month permission.
- The legal challenge has prevented the applicant from proceeding with the other elements of the application, which represent much needed upgrading works to the premises.
- The MSIF will be located 350m (4-mins walk) from the school via the shortest pedestrian route.
- The current situation presents unpleasant realities for children on a regular basis and the reality of increased homelessness, drug use and public injecting must be faced.
- The proposed development would positively address the issues facing local children through reduced public injecting and drug litter and preventing overdoses, while improving services to users.
- The HSE remains committed to implementing the National Drug and Alcohol Strategy, including mitigation of public injection and a pilot MSIF.

- The evaluation of the pilot scheme will include a Child Impact Assessment.
- An oversight group will monitor the operation of the MSIF and will include local stakeholders and community representatives including the school if agreed.
- The Board should have regard to the submission of the HSE (11th March 2022) which provides recent research regarding MSIFs.
- A statement is enclosed from the applicant outlining commitments to community engagement and collaboration with An Garda Síochána. Measures include:
 - Ongoing patrols, particularly for the school area/times
 - Sanctions policy for those engaging in anti-social/violent behaviour
 - Garda representation on the monitoring committee and nomination of a Community Liaison Officer
 - A pilot initiative with An Garda Síochána where 5 individuals were identified between August and November 2021 and taken to court for Anti-Social Behaviour Orders (ASBOs), 3 of whom received ASBOs for a period of 2 years.
 - MQI staff are planning to participate in a Garda-led community patrol initiative for the local neighbourhood.
- If the Dublin City Development Plan 2022-2028 comes into effect prior to the making of a decision, it is noted that the Draft Plan policy QHSN48 supports inclusive and accessible social and community infrastructure, while policy QHSN50 supports the Sláintecare Plan regarding the provision of appropriate healthcare facilities and their integration in accessible locations within new and existing communities. It is submitted that the proposal is in accordance with Policy QHSH50 as it involves an existing facility and client group and is funded and directed by the HSE.
- The Liberties LAP has expired and should not be considered by the Board.

7.5.3. Several further 3rd party submissions were received which generally reiterate the original observations and objections to the proposed development. The additional points raised can be summarised under the following headings:

The previous case

- The High Court decision has highlighted the Board's failure to consider impacts on the local school and the obligation of the Board to respect and vindicate the rights of the schoolchildren, including seeking further information on their health and welfare.
- The Board's decision did not adequately consider the impact of the development on commercial activities and businesses.
- The Board's decision, including the temporary permission, did not allow for review of impacts on the school and its pupils, or the impacts on commercial businesses and tourism.
- The previous Inspector's report contains no significant assessment of the concentration of all support institutions. The Inspector's conclusion was flawed regarding the impact on sensitive adjacent uses and the permitting of a temporary period to allow the opportunity to improve the existing situation.
- While the absence of a policing plan may not be a valid reason for refusal, crime and public safety are material planning considerations.

Temporary Permission

- The High Court decision questions the rationale for a temporary permission if there is no impact on residential amenity or the character of the area.
- A temporary permission may only serve to permit the facility to operate in the manner suggested by the third-party objections and the planning authority would be powerless to do anything about it until the permission expired. A similar temporary permission would be inappropriate in the next appeal determination.
- Section 7.5 of the Development Management Guidelines for Planning Authorities outlines that temporary permissions should not be used because of adverse effects on the amenities of the area.

Policy

- The proposed facility conflicts with the zoning objective by introducing a use which would effectively sterilise this location for mixed-uses and by failing to protect the dignity and built heritage of the area. It is difficult to see how the

nature and scale of the facility would enhance a sense of local community or sustain the vitality of the area, particularly at night-time.

- The proposal is contrary to section 12.5.5 and policies SN15 and SN22 of the Development Plan as it would result in an overconcentration of facilities and would adversely impact on the local area.
- The proposal is not consistent with Objective 2 of the Liberties LAP and would result in an inappropriate overconcentration of facilities. It would also conflict with other economic, tourism, and regeneration policies of the LAP.
- The applicant has failed to consider a range of Development Plan policies and objectives relating to the economy, heritage, regeneration, and tourism. It is submitted that the proposed facility would detract from the attractiveness of the area and conflict with these relevant policies.
- Regarding Policy QH30, it is highlighted that there are 5 addiction facilities within 500m of the site and a high concentration on the southside of the Liffey.
- The proposal is contrary to the LECP, including its dedicated tourism strategy.
- The proposal is contrary to 'Destination Dublin: A Collective Strategy for Growth to 2020', including the proposed Dubline Trail.

Crime/Tourism impacts and international evidence

- A report from Victoria, Australia highlights increased crime associated with MSIFs and recommends their relocation away from residential areas.
- The international examples cited by the applicant are not located in comparable locations where there are significant tourism and heritage assets, as well as a concentration of residents and other social support services.
- The applicant has not clarified the capacity or catchment areas of the cited international examples.

Other Issues

- The evaluation criteria for the operation of the facility are not based on valid or material planning outcomes as they can similarly be achieved in alternative locations.

- The Board is requested to appraise all evidence, to engage with all issues raised by the school, and to consider the irrationality of locating the facility in close proximity to a school.
- The Covid crisis allowed criminal gangs to take control of the area and highlighted the potential problems associated with the proposed facility.

7.5.4. A **Department of Health** submission from the Minister of State with responsibility for Public Health, Well Being and National Drugs Strategy highlights that a MSIF would positively impact on the lives of children and young people affected by parental problem drug use. It highlights research showing the high incidence of parents with drug use problems and the negative impacts ‘hidden harm’ has on child welfare and development. It concludes that the positive impacts on children must be factored into any consideration of the introduction of a MSIF.

7.5.5. A submission from the **HSE** aims to address concerns about the facility, particularly those in relation to the school. It was prepared with input from a Consultant Psychiatrist in Substance Misuse and National Clinical Lead for HSE Addiction Services, and a Senior Clinical Psychologist and Clinical Lead for HSE Addiction Services in HSE Mid-West Drug and Alcohol Service. The observations can be summarised as follows:

- The premise of the professional reports submitted on behalf of the school board is misdirected. The aim of the MSIF is to prevent the children’s exposure to public injecting and drug litter. The specific link between exposure to drug use in the community and developmental interference is not detailed with scientific evidence. Also, the suggestion that the facility would normalise drug use is not supported by scientific evidence. It may be argued that what is being normalised is a health-led approach to addiction which aims to reduce the harm caused, including inter-generational substance use.
- The school is undoubtedly a safe haven and concerns about drug treatment facilities in the area are noted. However, there is no recognition that the MSIF is designed as a solution to the problem by tackling visible drug use.
- The evaluation of the pilot scheme will include a child impact assessment.

- Since the last HSE submission in 2019, further reports from the European Monitoring Centre for Drugs and Drug Addiction have highlighted the benefits of MSIFs and found no evidence to suggest increased drug use or crime.
- Recent research from North America indicates that there are immediate health benefits and a significant decrease in criminal activity.
- The HSE remains committed to implementing the National Drug and Alcohol Strategy, including mitigation of public injection and a pilot MSIF. The evaluation of the pilot scheme will include a Child Impact Assessment and an oversight group will monitor the operation of the MSIF. This will include local stakeholders and community representatives including the school if agreed.
- Between 2018 and 2020, the HSE has recorded 370 overdoses in the city centre and 400 in Dublin County. This highlights the urgent need for a MSIF.
- The HSE remains fully supportive of this initiative. Given the strength of clinical and international evidence, it would be very disappointing if the project is not given the opportunity to provide the first facility of its kind in Ireland and the UK.

8.0 Assessment

8.1. Introduction

8.1.1. Having inspected the site and examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues for assessment in this appeal case are as follows:

- The principle of the development
- Visual amenity and built heritage
- Concentration of services
- Impacts on the local community.

8.2. The principle of the development

- 8.2.1. At the outset, it must be acknowledged that this is a nationally unprecedented proposal involving the authorised injection of otherwise illegal drugs, which has understandably caused significant concern in the local community. However, the principle of the proposal is backed by legislation in the form of the Misuse of Drugs (Supervised Injecting Facilities) Act 2017 ('the Act of 2017'), which allows for the licensing of a medically supervised injecting facility by the Minister for Health.
- 8.2.2. The principle of the proposal is further supported at national level through the national drugs strategy '*Reducing Harm, Supporting Recovery – A health-led response to drug and alcohol use in Ireland 2017-2025*'. Objective 2.2.29 of the strategy is to provide enhanced clinical support to people who inject drugs and to mitigate the issue of public injecting. It specifically aims to deliver this by establishing a pilot supervised injecting facility and evaluating the effectiveness of the initiative.
- 8.2.3. At local level, policy relating to the proposed development is less specific. However, I note that one of the high-level goals of the DCC Local Economic and Community Plan is to tackle the causes and consequences of the drugs crisis and significantly reduce substance misuse across the city through quality, evidence-informed actions. I consider that the current proposal is clearly an attempt to address substance misuse (i.e. public injecting) based on the evidence gathered by the HSE regarding the effectiveness of MSIFs. And in accordance with Policy SN22 of the Development Plan, I consider that, in principle, attempts should be made to facilitate such proposals as per the requirements of healthcare authorities.
- 8.2.4. In terms of zoning, the site is located within the Z5 'City Centre' zone where it is the objective '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and integrity*'. Section 14.8.5 of Development Plan outlines the uses which are 'permissible' and 'open for consideration' within this zone.
- 8.2.5. Understandably, the novel and unique nature of a MSIF is not specifically included within the uses listed in section 14.8.5. However, I note that '*buildings for the health, safety and welfare of the public*' is a category specifically listed as 'permissible'. The Board should note that the aim of establishing MSIFs, as specifically outlined in the Act of 2017, is to reduce harm to people who inject drugs and to enhance the dignity,

health and well-being of people who inject drugs in public places. They also aim to reduce the incidence of drug injection and drug-related litter in public places, which has obvious health and safety benefits for the wider public. On this basis, I am satisfied that the proposed facility would be in the interest of the health, safety, and welfare of both users and the wider public, and that the proposed use would be 'permissible' within the Z5 zoning objective.

- 8.2.6. As has been highlighted in third-party submissions, I acknowledge that a wider assessment of the zoning objective is required, beyond simply examining 'permissible uses'. In particular, concerns have been raised about the impact of the development on the future potential for intensive mixed-uses, which is a primary element of the zoning objective. In this regard, it must be noted that there is a long-established use of the existing building for homeless and drug services and the proposed development should be seen as one which consolidates, expands, and enhances this use rather than introducing an entirely new use to the area.
- 8.2.7. In addition to the long-established use of the appeal site itself, it should be noted that a significant portion of surrounding land use is occupied by significant features, sites, and/or long-established uses including the River Liffey, the Friary, Dublin City Council offices, Christ Church Cathedral, the Four Courts, St Audoen's Church/Park, and St Audoen's National School. Otherwise, the surrounding area contains a mix of smaller scale residential and commercial uses. Therefore, I would submit that there is presently a mix of residential, commercial, ecclesiastic, civic, community, and recreation uses in the area, and the limited scale of the proposed development would not significantly alter that mix.
- 8.2.8. Regarding concerns about adverse impacts on potential future mixed-use development, I would again highlight that those more significant sites/uses in the surrounding area are largely 'fixed' features due to their long-established history and nature of use. Therefore, much of the surrounding area is unlikely to be subject to significant redevelopment in the foreseeable future. The high concentration of protected structures and conservation areas also limits the potential for significant redevelopment. Accordingly, having regard to the established use of the appeal site, I do not consider that the proposed consolidation and enhancement of services would be likely to significantly impact of the future extent and type of development in the surrounding area.

- 8.2.9. The zoning objective also aims *inter alia* to protect and strengthen the character, dignity, vitality, and sense of community in the area. These are aims which require further assessment in sections 8.3 to 8.5 of my report. However, in principle, I am satisfied that the provision of a MSIF would be consistent with national health policy, that relevant local policy supports healthcare authorities in attempts to address drug-related problems, and that the proposed facility can be accommodated within the terms of the Z5 zoning objective. I acknowledge the HSE tender criteria and logic regarding the location of the facility within the inner-city and the subsequent selection of MQI as the preferred bidder. However, I would agree with the third-party contentions that the tender process should not determine the location of any such facility and the suitability of the proposed location within the inner-city will be assessed in the following sections of my report.
- 8.2.10. I note that many third-party submissions have questioned the principle of MSIFs and suggest alternative approaches to the drugs problem. However, as previously outlined, MSIFs are supported by national legislation and policy and any debate regarding the principle of their suitability as a health policy measure is outside the scope of this appeal. Similarly, suggestions regarding alternative locations and mobile solutions are outside the scope of the appeal and my report will concentrate on the actual facility proposed and its suitability at the appeal site.

8.3. Visual amenity and built heritage

- 8.3.1. The existing building was constructed in the 1960's and consists of a flat-roofed 3-storey over basement structure. It is setback significantly from the adjoining property to the west and is significantly lower in height than adjoining development along the quays. External finishes include a mixture of concrete brick, mosaic tiling, and plaster bands, while the fenestration consists of a mixture of uPVC frames and anodized aluminium curtain walling. The character of the building is quite dated and in stark contrast to the terraces of protected structures that otherwise exist to the east and west along Merchant's Quay. Ultimately, the existing building does not make a positive contribution to the streetscape or public realm and improvements would be welcomed.
- 8.3.2. The building is most visible in the public domain from the north (front) and eastern sides. It is proposed to demolish the existing entrance arrangements, toilet block,

and the water tank on the roof. The existing signage and windows/curtain walling on the front façade would also be removed, along with various other internal and external alterations. None of these features are of any particular value and I would have no objection to their removal.

- 8.3.3. It is proposed to construct a new enclosed ramped entrance to the front of the building, which will be linked via a pergola canopy to a new entrance, queuing area, and toilet block along the eastern side elevation. A simpler approach will apply to materials and colours, with a grey colour being applied to opaque elements, curtain walling, spandrel panels, steel gates, parapets and canopies. A new stainless steel backlit sign will be provided, and LED strip lighting is proposed into the soffit of the pergola canopy to enlighten the footpath and entrances.
- 8.3.4. I consider that the proposed alterations will add a more simple and contemporary character to the streetscape and will be a significant improvement on the existing building. The alterations to entrance/exit, queuing, and lighting arrangements will also significantly improve the interface of the building with the public realm.
- 8.3.5. I am conscious of the historic context of the site and the Development Plan policies which seek to protect the character of the surrounding protected structures and conservation areas. However, I consider that the proposed alterations would improve the character and setting of the existing building and would not detract in any way from the special interest or built heritage value in the area.
- 8.3.6. Having regard to the forgoing, I have no objections to the proposed development on the grounds of visual amenity or built heritage impacts.

8.4. Concentration of services

- 8.4.1. I acknowledge that Policy QH30 and section 16.12 of the Development Plan aim of avoid an overconcentration of institutional/homeless accommodation and associated support services. The aim of this approach is to protect the sustainability of neighbourhoods and the planning authority decision outlined a view that that there would be an unacceptable overconcentration of social support services in the Dublin 8 area. This view is generally supported by the third-party observations.
- 8.4.2. At the outset of this matter, I consider it prudent to discuss the nature and scale of the proposed development. In terms of its nature, it must be acknowledged that there

is a long-established use of the building for homeless and drug services. And while the proposed facility would provide the additional service of supervised injection, it would appear clear to me that it would serve a significant proportion of existing MQI clients and would compliment and enhance the existing range of services offered at the Riverbank building.

- 8.4.3. However, the question of scale has proved more contentious. The applicant has outlined a view that the facility would only serve the existing local client base and survey predictions indicate that 60-100 clients would use the facility daily. On the other hand, the planning authority has raised serious concerns that this unique facility would be of national scale, drawing significant additional clients from across the wider city and the entire country. Many of the third-party submissions share this concern.
- 8.4.4. The applicant's view is largely informed by survey and research. It highlights the results of the 2019 MQI survey which found that only 2.5% of people reported injecting drugs outside of Dublin and contends that this supports the widely held view that people do not travel to use needle exchanges. The applicant also cites a 2016 report on 'Alternatives to Public Injecting' (Harm Reduction Coalition) which found no evidence of increased drug use or people travelling from outside of a city to use a MSIF.
- 8.4.5. Given the unprecedented nature of this facility, I can understand the concerns of the planning authority and third-parties about the potential catchment range. There is often some level of uncertainty about the catchment and attraction of a new service, and particularly so when it is an unprecedented service. However, having regard to the supporting research, I consider the applicant's argument that this facility will serve an existing local catchment to be credible. In concluding so, I certainly do not disregard the inherent benefits and attractions presented by a MSIF. However, I am not convinced that they are such that would generate a national or regional catchment demand. Even the MQI survey of existing local clients found that not all local respondents would use such a MSIF, which is not indicative of a service that would be likely to expand regionally or nationally.
- 8.4.6. Ultimately however, like most developments, the size, design, and operation of the facility largely defines its scale and catchment. The applicant has clearly outlined the

operations plan for the facility which will regulate the capacity and flow of clients through the building in a measured and structured manner. Based on the limited number of 7 injection booths and an established booth stay period of 20 mins, it has been estimated that there would be a maximum of 21 injections per hour. I am satisfied that this design capacity is consistent with a local catchment and that, accordingly, the facility can only reasonably operate at that scale.

- 8.4.7. Having regard to the foregoing, I feel it is reasonable to conclude that the nature and scale of the proposed facility is one which is closely related to that of the existing MQI service, which serves an existing local catchment.
- 8.4.8. In terms of the cumulative impact of the facility and the concentration of other institutions/services, I note that the applicant's further information response outlined 3 maps identifying 39 no. social facilities within 500 metres of the application site, 17 of which are homeless facilities, and 4 of which provide addiction services. I note that the applicant has distinguished between general social facilities (including some facilities such as schools, childcare etc.), homeless facilities, and addiction services. The appeal also highlights the unique nature of the proposed facility and essentially suggests that there cannot be an overconcentration of a unique facility.
- 8.4.9. Regarding the applicant's distinctions, I acknowledge that Policy QH30 and section 5.5.11 of the Development Plan relate specifically to homeless services. And while the proposed facility cannot be identified as a facility *solely* for use of the homeless, it must be acknowledged that there is significant crossover between homeless and drugs services. This is demonstrated by the UISCE survey which found that 76% of respondents identified as homeless.
- 8.4.10. I would also highlight that Section 16.12 of the Development Plan outlines a wider interpretation of this policy approach, one which refers to 'other social support services' and is not specifically linked to homeless facilities. Therefore, on a wider reading of the Development Plan, I consider that the matter of concentration of homeless and other social support services in the area must be considered.
- 8.4.11. While I have acknowledged that all such services must be considered, I would also submit that not all services would have equal impact on a local neighbourhood. In my opinion, the concentration of homeless accommodation understandably features strongly in the Development Plan policy/provisions as it would have a significant and

primary impact by firstly establishing a concentration of homeless people in an area. This is often logically followed by the consequent need for supporting services. By their nature, these supporting services aim to mitigate the effects of homelessness. Furthermore, I can also understand the logic of co-location of services, not only with homeless accommodation but also with other support services. Therefore, not all social support services should be seen as contributing to a problem of overconcentration as they often aim to mitigate existing problems.

8.4.12. In my opinion, this is particularly applicable to this case. It is generally accepted that there is a high concentration of homeless accommodation in this area. In support of this population the existing MQI centre is long-established in the area and will continue in any case to provide important homeless and drugs services. And as previously outlined, I consider it reasonable to conclude that the proposed MSIF would be of a nature and scale which is closely related to the existing MQI service. Therefore, when considered in the context of a total of 39 other social support services, including 17 homeless services and 4 addiction services in the area, I consider that the proposed MSIF would represent a relatively minor increase in the concentration of homeless and social support services. And having considered policy QH30 and section 16.12 of the Development Plan, I do not consider that a refusal of the proposed development would be warranted on this basis.

8.4.13. I also note that the application outlines commitments to the relocation of the existing 'Night Café' in order to reduce the intensity of activities on the site. The Board should note that this service has already been discontinued as of March 2020, presumably in response to the Covid-19 emergency. My site inspections have confirmed that the service has not been re-introduced and the matter could be clarified further by means of a condition if necessary.

8.5. **Impacts on the local community**

8.5.1. Ultimately, the impact of the proposed development on the amenity and sustainability of the local area is the key determining issue in this appeal. Both the planning authority decision and the third-party submissions have raised serious and understandable concerns in this regard, including impacts on the residential community, the school, and the local economy (including tourism).

- 8.5.2. I acknowledge and understand the serious reservations about this unprecedented facility which would accommodate the grave practice of drug consumption, particularly given its proximity to the local school, homes, businesses, and tourist attractions. In order to assess this matter further, it is necessary to first consider the nature and causes of the impacts. In this regard the concerns mainly relate to public drug use, drug litter, and associated anti-social/criminal behaviour. I appreciate that these activities affect sectors such as residents, children, and businesses in different ways, but I consider that the problematic causative activities are generally common to all sectors.
- 8.5.3. The concerns of the local community are largely based on experience of the operation of the existing MQI centre and related activities. The submissions received contain comprehensive, shocking, and convincing testimony as to the gravity and frequency of anti-social behaviour. I have also visited the site and surrounding area on three occasions, but I accept that no number of visits can give a full appreciation of the challenges faced by those who live, work, and study in the area. I would report that two of my visits did not find any evidence of anti-social behaviour, while on another visit I did witness what appeared to be public drug-taking at the eastern end of Cook Street. In any case, I am in no doubt as to the extent and seriousness of problems experienced in the area.
- 8.5.4. However, while acknowledging the existing problems, I believe it is important to again consider the principle of MSIFs. The purposes of these facilities, as outlined in the Act of 2017, is not only to protect the health and well-being of users, but also *'..to reduce the incidence of drug injection and drug-related litter in public places and thereby to enhance the public amenity for the wider community..'* In short, the aim is to provide supervised private indoor spaces as an alternative to the practice of public outdoor injection and all the associated problems relating to public drug litter and anti-social behaviour. Effectively, they are proposed as a solution to an existing problem.
- 8.5.5. Consistent with those aims and based on MQI surveys indicating that the majority of existing clients would use such a facility, as well as the reported popularity of other international examples, I find it credible that the proposed development would result in a significantly reduced incidence of public injecting by existing users in the area. I also find it reasonable to conclude that there would be an associated reduction in

drug litter and anti-social/criminal behaviour. On this basis, the proposal would positively impact on the existing drug-use problem, resulting in an enhanced public amenity for the wider community, including the local school, residents, and businesses.

- 8.5.6. The simple impact of a successful facility would be to take drug injection out of the public realm and into a supervised private space. This would reduce the extent of drug-use, litter, and associated activity in the public realm, which would result in a safer and less intimidating environment for residents, tourists, and local businesses.
- 8.5.7. I acknowledge that there are several tourism attractions in the surrounding area and the importance of tourism to the local businesses. As highlighted by many third-party submissions, this is also reflected in Development Plan policies which seek to support the ongoing development of the tourism economy in the city. However, I consider that a reduced extent of injecting and associated activities in the public realm would improve the attractiveness of the area and its tourism potential, which would help to achieve the tourism objectives of the Development Plan.
- 8.5.8. Similarly, I consider that the main impacts on the residential community are concentrated in the public realm, and this would be enhanced by a reduced extent of public injecting and associated activities. There is not a high concentration of residential properties in the immediate vicinity of the appeal site. The most significant residential use would be the existing apartment block to the south. The majority of floorspace associated with the proposed development involves the basement fit-out and the replacement of the existing toilet block, and I do not consider that these elements would have any significant impacts on the adjoining residential units by reason of noise, disturbance, privacy, overshadowing, or otherwise. I note that an outdoor smoking area is proposed for clients along the eastern side of the building. This small area may result in some additional noise at times. However, I consider that it is sufficiently separated from the apartments and that any additional disturbance would not be significant in the context of this busy inner-city area which already includes active outdoor spaces in the adjoining school.
- 8.5.9. Specifically in relation to the school, I acknowledge its importance to the local community and its proximity to the proposed facility. The school site is approximately 20 metres from the appeal site (as the crow flies), albeit that there is a strong

separating buffer in the form of a 5-storey car park and a 4-storey apartment block. There is a vehicular entrance to the south of the appeal site onto Cook Street, but this is locked and is not available to the clients of the facility. Otherwise, the shortest route between the school and the appeal site is c. 300m via Winetavern Street to the east.

8.5.10. Given the school site itself appears to be a very well regulated and protected facility, I consider that the main potential impacts on children would occur while the children go to and from the school. All my site visits coincided with school start/finish times, and I found that a significant majority of children walk to/from the main residential areas to the west (towards Oliver Bond St), thereby avoiding any route past Merchant's Quay. In fact, I did not witness any children walking along Merchant's Quay. However, I would certainly accept that the 'zone of influence' of the existing MQI centre extends onto Cook Street, and that the public drug-use and associated anti-social behaviour has adverse impacts on school children, parents, and staff.

8.5.11. Again however, it must be highlighted that the proposed facility aims to significantly reduce these impacts by redirecting public injection to a supervised private space. The opening hours of the facility would also generally coincide with school start/finishing times. Consistent with the applicant's argument, I consider that this would be likely to result in less public injecting and associated anti-social activities at times when the children would be going to and from school. Therefore, while I note the clinical reports submitted on behalf of the school outlining that the proposed development would influence child behaviour and normalise drug use, I consider it reasonable to argue that their exposure to such activity is likely to be reduced by the proposed facility.

8.5.12. I have noted the comparisons by the school board submission and other third-parties between the proposed facility and other establishments/activities, such as fast-food outlets and alcohol advertising, and the policy/legislative restrictions that apply to same in and around schools. However, while I acknowledge the principal concerns regarding the impressionability of children, I do not consider these restrictions to be directly comparable or applicable in this case. The fast-food and advertising restrictions would relate to the introduction and/or promotion of food and drink, which is widely accepted as being unhealthy and has no justifiable need to locate in any

particular area. Accordingly, I consider it reasonable that locations in and around schools should be avoided.

- 8.5.13. To state the obvious, illegal drug-taking is also an unhealthy practice and should not be condoned, especially in the vicinity of schools. However, it must be remembered that the children's exposure to public drug-taking already exists in the area. One of the principal purposes of the proposed facility is reduce/remove that public exposure and the negative impressions that it may leave on children. Therefore, given the established nature of the problems in the area, I do not consider that the proposed facility should be subject to the same restrictions that may apply to proposals for fast food outlets or alcohol advertising are applicable in this case.
- 8.5.14. Finally, regarding the school board's submission, I note that concerns have been raised about non-compliance with the conditions of a previous permission (ABP Ref. PL 29S.228820), albeit that the submission acknowledges belated efforts by the applicant to comply. It also alleges an unauthorised addition of the Night Café use, a service which I have clarified has since been discontinued. Ultimately, any outstanding planning enforcement matters are the responsibility of the local authority and I do not consider that there are grounds to support a refusal by the Board on this basis.
- 8.5.15. In the foregoing I have outlined my opinion that the proposed facility is credibly aimed at reducing the extent of public injecting and associated problems in the area. However, the planning authority and third-party submissions also raise concerns that there would be certain unintended consequences in the form of increased client numbers, increased drug-use, and increases in associated anti-social/criminal activity. In summary, there is a concern that the authorisation of the facility would create a concentration of activity where drugs are sold and consumed, and that related anti-social/criminal activity will ensue.
- 8.5.16. In section 8.4 of this report, I have previously addressed the question of scale and concluded that the capacity of the proposed facility will ultimately be controlled by its design and operation and that it is likely to serve an existing local catchment with no significant additional client numbers.
- 8.5.17. However, I would accept that the nature and extent of activity outside the appeal site is more difficult to predict or control. In support of the proposed development, the

applicant has included a report with the appeal entitled '*Public Health and Public Order Outcomes Associated with Supervised Drug Consumption Facilities: a Systematic Review*'. The report systematically reviews the literature investigating the health and community impacts of supervised consumption facilities (SCFs). Five studies demonstrated the role of SCFs in addressing public disorder associated with illicit drug use and generally found reductions in public injections and drug litter and an increase in the proportion of residents who agreed with positive statements about SCFs. Six studies examined the association between SCFs and drug-related crime. Four of these were conducted in Sydney and found no changes in recorded drug-related crime after the facility was established. Similar results were recorded for two studies in Vancouver. A support submission from the HSE also refers to research from the European Monitoring Centre for Drugs and Drug Addiction that indicates no evidence of increased drug use or crime associated with such facilities.

8.5.18. On the other hand, the third-party submissions contain references to several reports of increased anti-social behaviour and crime associated with SIFs in North America, Australia, and various European cities. The Liffey Quays Residents & Traders Association submission includes appendices outlining concerns relating to several international examples and a SCF Community Consultation Summary Report relating to London, Ontario (2018) which highlights concerns about the location of SCFs within existing residential communities and schools.

8.5.19. I have considered the international evidence submitted on both sides and I acknowledge that it contains conflicting views on the nature and extent of impacts associated with MSIFs. Ultimately, I consider that the impacts will understandably differ depending on the site context and the operation and management procedures in place. Contextual comparisons are further challenged by the absence of operational evidence in Ireland, or even our nearest neighbours in the UK. However, as previously outlined in this report, I consider that the established use of the MQI centre, together with the extent of public injecting and associated problems in this area, provides a context that is worthy of giving serious consideration to the proposed facility. The applicant's proposals in relation to operation and management will be assessed in the following sections.

8.5.20. The applicant's further information response included an Operations Plan which outlines the MSIF Service Design. It will operate three sessions Monday to Friday

(i.e. 06:00 – 10:00, 14:30 – 17:30, & 19:00 – 21:30) and two sessions on Saturday & Sunday (i.e. 06:00 – 10:00, & 15:30 – 21:00), which is stated to be in line with HSE requirements, public consultation results, and current international practice. Based on the number of booths and average stay times, the operations have been designed to cater for an efficient flow of 60-100 clients daily. Procedures are in place for opening and closing the facility.

- 8.5.21. The staffing levels and management structure have also been outlined in the Operations Plan. This includes managers, clinical staff, community liaison officer, project workers, and security. Specific roles and responsibilities have been assigned to all staff.
- 8.5.22. Section 5 of the Operations Plan deals with 'Access to Service'. Licensed security staff and MQI staff will manage the gated off-street queuing area to the west of the site. The applicant states that the area can accommodate c. 30 persons and will be monitored and managed to ensure that there will be no congregating or associated impacts on the public realm. Overflow areas will be available for queuing in the unlikely event they are required. A range of criteria is outlined which clients must comply with in order to access the MSIF. Intoxicated clients will not be permitted to enter, and a Code of Conduct will apply. Breaches of rules will result in sanctions and refusal of entry. Prior to exiting the MSIF, staff will engage with clients for safety advice and intoxicated clients will be encouraged to remain in the centre. Emergency closedown procedures are also included in response to any serious incidents or events.
- 8.5.23. I note that the planning authority and third-party submissions have also raised concerns about the lack of engagement with community stakeholders and management of the public realm. In response, the applicant has prepared a Public Realm and Community Engagement Plan (PRCEP). The aim of the Plan is to strengthen relationships with the local community through improved engagement and communication.
- 8.5.24. The PRCEP involves a broad range of communication channels, including the 7-person Community Engagement Team (CET) which actively patrols the area and engages with the local community. Details of the CET daily schedule are included, and this outlines a comprehensive, continuous schedule of monitoring, clean-ups,

community check-ins, and query/call-out responses. The PRCEP also outlines that there will be a Community Liaison Officer and Assertive outreach Team, as well as regular communication with community groups, local representatives, and through a Good Neighbour Policy and various media services. A Department of Health Community Fund of €100,000 will benefit the local community. MQI will work closely with An Garda Síochána (AGS) to address the challenges of anti-social behaviour and drug-related crime. As part of the tender process, AGS were part of the working group in order to make recommendations on design and governance structures of the facility. AGS will also be part of the MSIF Monitoring Committee.

8.5.25. Following on from the matter of AGS involvement, I acknowledge that the question of a Policing Plan is a central issue in this case. At further information stage, the planning authority requested a detailed and targeted policing plan, prepared in conjunction with AGS. In response to the appeal, the planning authority has clarified that the applicants were expected to provide a robust policing plan in conjunction with AGS, but there was no requirement for AGS to provide any detail which would compromise security.

8.5.26. The applicant's response to the further information request included a letter from the Detective Superintendent of the Garda National Drugs and Organised Crime Unit. It cited legal advice that it would not be appropriate for an independent impartial policing service to be seen to influence the outcome of the planning process and that the creation of a policing plan for the facility would be inappropriate at this stage. It stated that in the event of a grant of permission, AGS may then prepare a policing plan based on a collaborative approach with all relevant stakeholders.

8.5.27. The appeal elaborates on the absence of a policing plan and is accompanied by Senior Counsel legal advice from Eamon Galligan. Regarding the further information request and response, Mr Galligan submits as follows:

- DCC would have been adjudicating on the effectiveness of a policing plan, which could easily be seen as undermining the role of AGS.
- The submission of a policing plan would have meant AGS involvement and influence in the planning process.
- In the event of a refusal, AGS would have wasted resources in the preparation of a policing plan.

- The disclosure of a detailed policing plan in a public planning process would appear highly undesirable.

8.5.28. In relation to the Planning and Development Act 2000 ('the Act of 2000'), Mr Galligan contends that the fact that public safety is a relevant planning consideration does not necessarily mean that a detailed policing plan is something which is necessary to the consideration of whether or not to grant permission. He concludes that the requirement for a policing plan would be *ultra vires* for following reasons:

- It is not something within the applicant's power to deliver.
- It is a matter which is entrusted to a separate and independent statutory authority i.e. An Garda Síochána.
- It is not relevant to planning in that planning authorities have no expertise or competence in adjudicating on policing plans or their adequacy.
- The planning code does not require the submission of detailed plans or particulars for certain developments associated with AGS which are used in connection with its operations.
- There is no requirement under the 2001 Regulations for furnishing such a plan, nor is AGS a statutory consultee in the context of development such as that proposed.

8.5.29. Mr Galligan also highlights that the Act of 2017 requires that any application for a licence for the operation of a MSIF must include particulars of the protocols for the operation and clinical governance of the facility. Therefore, he contends that these clinical governance matters are relevant to the licensing process and not planning purposes. The legal advice also highlights that Section 3(2) of the 2017 Act gives the Minister power to consult with AGS, in which case a detailed policing plan would be a relevant consideration, and Section 3(6) gives powers to impose conditions based on consultation with AGS. Furthermore, Section 5 of the 2017 Act gives the Minister powers to revoke, suspend, or attach additional conditions to the licence based on consultations with AGS.

8.5.30. Mr Galligan's advice concludes that the terms and conditions of a licence granted under the Act of 2017 are intended to regulate most of the operational matters relating to medical supervision and clinical governance and that these are not matters that are within the scope of planning control.

- 8.5.31. I have considered the opposing views in this case regarding the requirement for a policing plan. It is generally accepted by all parties and stakeholders that a policing plan is required, but the opposing views generally relate to the timing, detail, adequacy, and approval process for any such plan. In this regard, I can certainly understand the concerns of the local community.
- 8.5.32. However, while I acknowledge that there would be some overlap in the issues assessed in the planning process and the licencing process under the Act of 2017, particularly some associated impacts on the surrounding public realm, I do not consider that it is necessary to agree a policing plan as part of the planning process. It must be noted that the planning process operates in tandem with a range of separate legal codes, and that, as per section 34(13) of the Act of 2000, '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. In this case, the applicant would be required to also comply with the licencing requirements of the Act of 2017 which, unlike the Planning Act of 2000, includes specific provisions for consultation with AGS in assessing, conditioning, and revoking/suspending/amending any licence or application. I am satisfied that the question of policing plans is appropriately and adequately addressed under this separate legal code, and that AGS has confirmed a commitment to working with the applicant and all relevant stakeholders in devising such plans.
- 8.5.33. I also note that section 1.3 of the HSE Invitation to Tender sets out the requirements of the service, including section 1.3.8 which states that engagement with the local Garda station will be essential and the operator will be expected to demonstrate a model where An Garda Síochána is supportive of the day to day operation of the SIF in their area. This will include an agreement around dealing with anti-social behaviour in and around the SIF. In my opinion, this demonstrates a commitment towards an appropriate policing plan, and it is reasonable to conclude that such commitments were demonstrated as part of the contract award.
- 8.5.34. Furthermore, I do not consider it appropriate that the assessment of policing plans should be duplicated under the planning process. I would accept that it would involve inappropriate disclosures of AGS operations. It would not be within the applicant's power to deliver and so it would not be appropriate to condition such a requirement as part of any permission. Furthermore, I would accept that it would not be within the powers of the planning authority or the Board to enforce a policing plan.

8.5.35. I note that a submission from The Temple Bar Company includes a report from a former Assistant Commissioner of AGS and outlines concerns in relation to increased drug use and associated criminality, and the absence of adequate police resources to control such a facility in the city centre. However, consistent my opinion outlined above, I consider that this is a matter which should be considered separately under the licencing provisions of the Act of 2017.

8.5.36. I also note that some submissions raise concerns about traffic safety impacts in the area given the proximity of the proposed facility to a busy road network, particularly given that clients may be intoxicated. However, I note that the proposed Operations Plan includes improved measures to the separation of clients into three separate user groups with separate entrances and exits. The plan also includes security staff and monitoring which will prohibit congregations outside the facility. Together with the improved queuing facilities, I consider that this will ensure an efficient and regulated flow of clients and will suitably mitigate risk of overspill onto the adjoining footpath/road. The facility also includes aftercare services, and the Operations Plan outlines that clients will be discouraged from exiting the premises while intoxicated. While this does not appear to guarantee that intoxicated clients will not exit the building, I feel that the arrangements would be a significant improvement on the existing practices of public injecting in close proximity to adjoining roads and streets. Therefore, I consider that the proposed facility would provide a regulated environment which would reduce the risk of traffic hazard in the area.

8.6. **Summary and conclusion**

8.6.1. In concluding, I am again conscious of the unprecedented nature of the proposed development and the serious concerns that exist in relation to the principle of the proposed facility. However, MSIFs are supported by legislation and national health policy, and local policy recognises the need to facilitate health authorities in tackling the drugs problem. I am satisfied that the proposed facility would be intended for the health, safety, and welfare of the public and, in principle, would be a permissible use within the Z5 City Centre zoning objective. It would not, by reason of its limited scale and the nature and scale of surrounding development, detract from the existing or future mix of uses in the area, and I am satisfied that the proposed alterations to the building would provide an improved contemporary appearance which would not

detract from the character, setting, or value of the surrounding protected structures and conservation areas.

- 8.6.2. I accept that there is a concentration of homeless accommodation and other social support services in this area. However, I consider it reasonable to conclude that the nature and scale of the proposed facility would be closely related to the that of the existing MQI service, which serves an existing local catchment. And while I acknowledge the potential adverse impacts associated with a concentration of such services, I consider it reasonable to see the proposed facility as one which mitigates the existing primary problems associated the concentration of homeless accommodation and support services. Furthermore, I note that the concerns regarding the operation of the Night Café in the existing MQI centre no longer apply as this service has been discontinued, thereby resulting in a reduced level of services in recent years.
- 8.6.3. I acknowledge that the local community has suffered from anti-social behaviour and other adverse effects associated with various social support services in the area, including the existing MQI centre. However, it is reasonable to conclude that the impact of the proposed development would be consistent with one of the primary aims of the Act of 2017, i.e. to reduce public injecting and its associated problems in the interest of enhancing public amenity for the wider community. It is intended as part of the solution to an existing problem and aims for an improved environment for the local community, including residents, commercial businesses (including tourism), and local community facilities such as St Audoen's school.
- 8.6.4. I have acknowledged concerns about unintended consequences including increased numbers of users and associated anti-social/criminal behaviour, and I would accept that this is challenging to accurately predict given the unprecedented nature of the facility. However, I believe that the design and capacity of the facility would limit its service catchment, which would credibly be consistent with the existing local client base. The Operations Plan would include improved queuing facilities and a client flow design which would ensure the efficient and effective operation of the facility.
- 8.6.5. While the associated activities and impacts are more difficult to predict and control outside the premises, I note that the applicant has prepared a Public Realm and Community Engagement Plan. I consider that it outlines a comprehensive range of

staff/teams and programmes aimed at protecting the public realm and improving engagement through a range of practices and media. And while I acknowledge that concerns have been raised about the applicant's performance in this sphere in the past, I consider that any grant of permission should include a condition requiring compliance with the measures outlined in the Plan.

- 8.6.6. I have accepted that a policing plan is a necessary requirement of such a facility. However, I am satisfied that it is appropriately and adequately addressed under the separate legal code of the licencing process outlined in the Act of 2017. And consistent with the requirements of the HSE tender, the application includes a commitment from An Garda Siochána to work with the applicant and all relevant stakeholders in devising such a plan. I am satisfied that the assessment of such policing plans should not be duplicated under the planning process.
- 8.6.7. Notwithstanding the above, I would accept that there is an inherent level of uncertainty about the impacts of any new service, which is particularly relevant given the unprecedented and sensitive nature of the proposed facility. In recognition of this situation, the applicant has outlined that the facility would be operated on a pilot basis for 18 months. The operation and impacts of the development would be monitored and reviewed by a cross-sectoral independent committee after 6 and 18 months. The pilot programme may then be extended to a maximum of 3 years, although I would accept that a more permanent facility could be proposed under a separate contract/licence. Separate to this process, I note that the Minister has powers under section 5 of the Act of 2017 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.
- 8.6.8. Irrespective of the potential limitations associated with these separate procedures, the Board must consider whether it is appropriate to limit the duration of the permission under the planning code, and if so, to what extent. Planning legislation allows for the imposition of a limited period of permission by condition in accordance with sections 40(2)(a)(ii) and 34(4)(n) of the Act of 2000. Section 7.5 of the Development Management Guidelines for Planning Authorities (Department of the Environment, Heritage and Local Government, 2007) also outlines guidance on the application of temporary permissions.

8.6.9. The Development Management Guidelines ('the Guidelines') outline three main factors that should be considered as follows:

- Whether the applicant wishes to carry out development of a permanent nature that conforms with the development plan.
- Whether a structure is clearly intended to be permanent.
- The reason for a temporary permission can never be because of adverse effects on the amenities of the area. If adverse effects are certain, they can only be safeguarded by ensuring that development does not take place.

8.6.10. In response to the above, I would highlight that the MSIF is proposed by the applicant on a pilot 18-month basis and the applicant has confirmed that a condition limiting the operation of the MSIF to a period of 18 months would be welcomed. Therefore, while it is clear that the facility may be proposed on a permanent basis in the future, if successful, there is also an acceptance that it may be required to close within 18 months. There are no significant new structures associated with the MSIF as it mainly involves change of use and relatively minor internal and external alterations.

8.6.11. On the question of effects on the amenities of the area, I do not consider it reasonable to conclude that adverse impacts are certain to occur. I would accept that there is a level of uncertainty about the impacts of this new service, which could be significant and serious if not properly controlled. On balance however, I consider that the application has demonstrated convincing potential to reduce public injection and associated anti-social behaviour, which would result in significant benefits for drug-users, the public realm, and the local community. Furthermore, this pilot facility has the potential to establish a best-practice approach which could be replicated in a wider network of similar facilities, thereby delivering further benefits. In my opinion, these benefits outweigh the potential risk of adverse local effects.

8.6.12. The Guidelines further state that in the case of a use which may possibly be a "bad neighbour" to uses already existing in the immediate vicinity, it may sometimes be appropriate to grant a temporary permission in order to enable the impact of the development to be assessed, provided that such a permission would be reasonable having regard to the expenditure necessary to carry out the development. I have acknowledged the concerns that the proposed MSIF may be considered a 'bad

neighbour' and I consider it appropriate to impose a temporary permission in this case. This would allow for an assessment of the operation and management of the facility and its effect on the amenities and sustainability of the local community, including the residential community, the school and other community facilities, commercial businesses including tourism, and the public realm in general. A decision could then be made, in planning terms, as to whether or not it is appropriate to continue the use and/or amend the conditions that apply to the use.

- 8.6.13. I consider that an 18-month temporary permission would be an appropriate period. There is a clear rationale for this duration in that it would coincide with the pilot period as outlined in the tender for operation. Furthermore, I consider that it is a sufficient period to allow the facility to 'find its feet' and establish best practices, while also allowing for monitoring and assessment over a significant time period. And most importantly, I consider that the 18-month period would be adequately limited to ensure that excessive damage would not be inflicted on the sustainability of the local neighbourhood in the unintended event of adverse impacts occurring. I also consider that the period is reasonable having regard to the necessary expenditure, and the applicant has effectively acceded to this by inviting such a condition.

9.0 Appropriate Assessment

- 9.1. I note that the nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC (c. 3.5km and 4km from the appeal site respectively). I acknowledge that there are several other Natura 2000 sites in the wider surrounding area, including more distant sites within Dublin Bay. There are no direct pathways between the appeal site and any of these Natura 2000 sites, although I acknowledge that there are indirect connections via the River Liffey, surface water emissions, and foul water drainage.
- 9.2. I confirm that no mitigation measures are being relied upon for Appropriate Assessment screening. The proposed development is of limited scale and is significantly distanced from Natura 2000 sites. There is only minimal potential for indirect hydrological connections, which would have sufficient assimilative capacity to accommodate the minimal impacts of the proposal. Accordingly, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed

development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

10.0 Recommendation

Having regard to the foregoing and the reasons and considerations outlined below, I recommend that planning permission should be granted subject to conditions.

11.0 Reasons and Considerations

Having regard to the national drugs and alcohol strategy 'Reducing Harm, Supporting Recovery – A health-led response to drug and alcohol use in Ireland 2017-2025', published by the Department of Health in 2017, and the provisions of the Dublin City Development Plan 2016-2022, including Policy SN22, it is considered that the proposed development would facilitate healthcare authorities in the consolidation and enhancement of healthcare facilities, including the delivery of a pilot supervised drug injection facility. The proposed uses would be consistent with the 'Z5 City Centre' zoning objective as outlined in the Development Plan and, having regard to the established uses on the site and the nature and limited scale of the proposed facility, it is not considered that the proposed development would significantly detract from the mix of uses in the area or result in an overconcentration of institutional accommodation and other social support services. The proposed facility aims to reduce the level of exposure to drug injection and associated anti-social behaviour in the public realm and it is considered that, subject to the conditions set out below, including a condition limiting the period of the permission to 18 months to allow for monitoring and evaluation of its impacts, the proposed development would not seriously injure the amenities of the area or the sustainability of the local neighbourhood, including the local school and other community facilities, the resident community, the local economy including tourism business, or the public realm in general. Furthermore, the proposed development would not detract from the visual amenity or built heritage of the area and would be acceptable in terms of traffic safety and convenience. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 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 period of eighteen 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 granted.

Reason: To allow for a review of the development having regard to the circumstances then pertaining and to allow for the monitoring and evaluation of the impacts of the facility on 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 as 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 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 to 1900 Mondays to Fridays inclusive, between 0800 to 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 (St Stephens 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.

Stephen Ward
Senior Planning Inspector

10th October 2022