



An
Bord
Pleanála

Inspector's Report ABP-314484-22

Development

Permission for retention permission is sought for an additional 10sqm of retail space on level 2. Planning permission is sought for the change of use from nightclub to recreational use. Planning permission is sought to permit the continued sale and consumption of alcohol on the premises.

Location

Icon Centre, Pavilion Building,
Leopardstown Racecourse, Foxrock,
Dublin 18, D18C9V6

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D22A/0269

Applicant(s)

Leopardstown Club Ltd.

Permission and Retention Permission

Planning Authority Decision

Split Decision/ Grant/ Refuse

Type of Appeal

First Party Appeal

Appellant(s)

Leopardstown Club Ltd.

Observer(s)

None.

Date of Site Inspection

27th October 2023

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located at Leopardstown Racecourse, Foxrock, Dublin 18. The subject proposal relates to the ICON Centre, Pavilion Building. The buildings at the racecourse include the subject pavilion building, the racecourse grandstand building, Golf Centre and a Gym, together with hardstanding areas, access roads and parking.
- 1.2. The subject site, which relates to the Pavilion Building, has a stated area of 0.227 hectares (2,270 sqm). The site is accessed to the south via a slip road off the M50 Motorway (junction 15) and to the north via the avenue access road entered from the Leopardstown Road to the north.

2.0 Proposed Development

- 2.1. The proposed development comprises of:
 - Permission for alterations to a previously approved permission D17A/0258.
 - **Retention** is sought for an additional 10sqm of retail space on Level 02.
 - The existing layouts on all levels remain unchanged, as shown on the submitted plans.
 - **Planning permission** is sought for the change of use from nightclub to recreational use of the identified areas on Levels 02, 03 & 04.
 - **Planning permission** is sought to permit the continued sale and consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258.
 - As per Q. 10 of the planning application form, the Gross Floor Space of the existing building is stated to measure 4,852 sq. The Gross Floor Space of the proposed works is stated to measure 1,206 sqm (Change of Use) and the Gross Floor Space of the area to be retained (Retail Floorspace) is stated to measure 10 sqm.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a Notification of **SPLIT DECISION** to both **REFUSE** permission and to **GRANT** permission on 03/08/2022, as set out below.

3.1.2. **REFUSE** permission for 'Change of use from a nightclub to recreational use on areas shown on the drawing on levels 2, 3, & 4', for the reasons given in the First Schedule, for the following reason(s):

"The proposed 'Change of use from a nightclub to recreational use on areas shown on the drawings on levels 2, 3 & 4', would materially contravene the 'F' zoning of the site and Specific Local Objective No. 49 of the Dun Laoghaire-Rathdown County Development Plan 2022 – 2028, which seeks 'To support the status of and continued viability of Leopardstown Racecourse as one of Europe's premier racetracks and a major leisure facility in the County by encouraging its future development and facilitating the development of supporting facilities' it would set an undesirable precedent for further similar development in the immediate area, and would be contrary to the proper planning and sustainable development of the area."

3.1.3. **GRANT** permission for 'Retention permission of an additional 10sqm of retail space on level 2, and the continued sale and consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258,' for the reasons set out in the First Schedule subject to the conditions set out in the Second Schedule.

3.1.4. The Second Schedule contains a total of 5 no. relatively standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Local Authority Planner** considered that having regard to the zoning of the site, the current use of the premises, which includes a retail element and hospitality, as well as Specific Local Objective No. 49, that retention of an additional 10sqm of retail space on level 2, and the continued sale and consumption of alcohol on the

premises which includes the existing terrace as granted by D17A/0258, is acceptable and that planning permission should be granted for this part of the scheme.

3.2.3. The Local Authority Planner further considered however that the proposed change of use from a nightclub to recreational use on areas shown on the drawings on levels 2, 3 & 4 and as clarified by further information, would not be considered acceptable and planning permission should be refused for this part of the scheme. The Local Authority Planner considered that the change of use materially contravenes the 'F' zoning of the site and Specific Zoning Objective no. 49.

3.2.4. Accordingly, the Local Authority Planner recommended that a Split Decision be issued, as follows:

- **REFUSAL OF PERMISSION** for change of use from nightclub to recreational use on areas shown on the drawings on levels 2, 3 & 4, for 1 no. reason.
- **GRANT OF PERMISSION** for Retention of an additional 10sqm of retail space on level 2, and the continued sale and consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258, subject to 5 no. conditions.

3.2.5. The recommendation was endorsed and a Decision to was issued on 03/08/2022.

3.2.6. Other Technical Reports

3.2.7. The **Drainage Planning Department**, as per the Report dated 25/03/2022 raise no objection to the proposed development subject to 1 no. condition which states:

'All drainage related considerations of parent applications D15/0328 and D17A/0258 shall apply.'

3.2.8. The **Environmental Health Service/ Officer** Report dated 31/05/2022 raises no objection to the proposed development subject to 2 no. conditions in relation to noise and waste storage/ disposal/ recycling facilities.

4.0 Planning History

4.1. Planning History on the Subject Site

- **D17A/0258:** Applicant: Leopardstown Club Limited. Permission for alterations, partial change of use and extension to the existing Pavilion Building on site. Permission was **GRANTED** on 22/06/2017.

Condition no. 2 reads as follows:

'There shall be only one nightclub in operation at any one time in the Leopardstown Racecourse lands as outlined in blue on Drawing No. 1337-PL-228.

Reason: To ensure that the development shall be in accordance with the permission and that effective control be maintained.'

- **D16A/0450:** Applicant: Leopardstown Club Limited. Permission for amendment to previously approved planning permission ref. no. D15A/0328. The amendment comprises of provision of ticket booth and sliding security gate within South Entrance Building. Revised layout to landscaped external area outside new Weigh Room building to provide additional 5 no. disabled car parking in lieu of previously approved service yard. No additional floor area is proposed. Permission was **GRANTED** on 21/09/2016 subject to 8 no. conditions.
- **D15A/0328:** Applicant: Leopardstown Club Ltd. Permission for a reorganisation and upgrade of existing facilities on site and no intensification of use is proposed. Permission was **GRANTED** on 13/08/2015.
- **D14A/0524:** Applicant: Michael McGuirk. Permission for a single storey extension to side, alterations and extension to ramped access to first floor, modification to curtain walling at stairwell, internal modifications and Change of Use from licensed premises to retail. Permission was **GRANTED** on 13/11/2014 subject to 10 no. conditions.

Condition no. 3 reads as follows:

'The use of the proposed development shall be limited to that described, i.e., retail area relating to golf.

Reason: In the interests of controlling the future use of the proposed development.'

- **D08A/1181:** Applicant: Livy Issue Ltd T/A McGuirks Golf. Permission for a change of use of an existing licensed premises area forming part of the icon centre in the pavilion building to a proposed retail area extension on the first/mezzanine floor area comprising 158 sqm, internal alterations and construction of new separating wall with remaining licensed premises area and services alterations to extended retail area. Permission was **GRANTED** on 05/02/2009.

Condition no. 4 reads as follows:

'The use of the proposed development shall be limited to that described, i.e., a retail area relating to golf.'

Reason: In the interests of controlling the future use of the proposed development.'

- **D98A/0976:** Applicant: Leopardstown Club Ltd. Permission for 8 no. external signs on the Pavilion Building. Permission was **GRANTED** on 23/02/1999 subject to 1 no. condition.
- **D98A/0717:** Applicant: Leopardstown Club Ltd. Permission for Minor modifications to approved plans of Pavilion Building (Reg. Ref. D98A/0170) comprising extension to basement and additional mezzanine floor. Permission was **GRANTED** on 22/12/1998 subject to 3 no. conditions.
- **D98A/0170:** Applicant: Leopardstown Club Ltd. Modifications to approved plans for 3 storey over part basement, Pavilion Building comprising proposed licensed corporate entertaining area, proposed licensed visitor centre and retail shop in lieu of children's play centre. Permission was **GRANTED** on 23/06/1998 subject to 7 no. conditions.
- **D97A/0792 (Appeal Ref. no. PL06D.105136):** Applicant: Leopardstown Club Ltd. Permission for 3 storey over part basement Pavilion Building comprising proposed licensed corporate entertaining area, proposed licensed visitor centre and children's play centre. Permission was **GRANTED** on 03/03/1998. An appeal to An Bord Pleanála was **WITHDRAWN**.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The subject site is zoned 'Objective F' in the Dun Laoghaire County Development Plan 2022-2028. The relevant zoning objective for Objective F zoned lands is: *'to preserve and provide for open space with ancillary active recreational amenities.'*
- 5.1.2. The overall racecourse site is ascribed the following Specific Local Objective (49):
- *'To support the status of and continued viability of Leopardstown Racecourse as one of Europe's premier racetracks and a major leisure facility in the County by encouraging its future development and facilitating the development of supporting facilities.'*
- 5.1.3. Chapter 13 of the Development Plan relates to Land Use Zoning Objectives.
- 5.1.4. Section 13.1.5 relates to uses which are Not Permitted/ Other Uses and states:
- *'Uses which are not indicated as 'Permitted in Principle' or 'Open for Consideration' will not be permitted. There may, however, be other uses not specifically mentioned throughout the Use Tables that may be considered on a case-by-case basis in relation to the general policies of the Plan and to the zoning objectives for the area in question.'*
- 5.1.5. Section 13.1.7 refers to Non-Conforming Uses and states:
- *'Throughout the County there are uses which do not conform to the zoning objective for the area. All such uses, where legally established (the appointed day being 1 October 1964) or were in existence longer than 7 years, shall not be subject to proceedings under the Act in respect of continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.'*
- 5.1.6. Table 13.1.9 relates to zoning 'Objective F' and details the types of uses which are either *'Permitted in Principle'* or *'Open for Consideration'* under zoning 'Objective F'.

5.1.7. The following uses are 'Permitted in Principle' on lands zoned Objective F:

- *'Community Facility¹, Cultural Use¹, Open Space¹, Sports Facility¹, Travellers Accommodation².'*

5.1.8. The following uses are 'Open for Consideration' on lands zoned Objective F:

- *'Allotments, Carpark¹, Cemetery, Craft Centre/Craft Shop³, Childcare Service³, Crematorium¹, Education¹, Garden Centre/Plant Nursery¹, Golf Facility¹, Guest House³, Place of Public Worship¹, Public Services, Tea Room/Café¹.'*

5.1.9. A Leisure Facility use is identified as a use which is 'Permitted in Principle' on lands zoned Objective DC, Objective MTC, Objective W, Objective MIC & Objective MOC and is 'Open for Consideration' on lands zoned Objective SNI and Objective E,

5.1.10. Section 13.2 of the Plan provides Definitions of Use Classes. The following definitions are considered to be of relevance to the subject appeal:

- **Leisure Facility:** *'A building or part thereof or land which may be available to the public on payment of a charge or free of charge and which may contain a theatre, cinema, concert hall/music hall, conference centre, bingo hall, bowling alley, skating rink, or children's/ teenager's games centre.'*
- **Restaurant:** *'A building or part thereof where the primary function is the sale of meals and refreshments for consumption on the premises.'*
- **Nightclub:** *'A building or part thereof where the primary function is the provision of dancing facilities.'*

¹ Where lands zoned F are to be developed then: Not more than 40% of the land in terms of the built form and surface car parking combined shall be developed upon. Any built form to be developed shall be of a high standard of design including quality finishes and materials. The owner shall enter into agreement with the Planning Authority pursuant to Section 47 of the Planning and Development Act 2000, as amended, or some alternative legally binding agreement restricting the further development of the remaining area (i.e., 60% of the site) which shall be set aside for publicly accessible passive open space or playing fields. Said space shall be provided and laid out in a manner designed to optimise public patronage of the residual open space and/or to protect existing sporting and recreational facilities which may be available for community use.

² In accordance with the approved Traveller Accommodation Programme 2019-2024 (or as amended).

³ In existing premises.

5.1.11. Zoning Objective F refers to active recreational uses. Such uses are not expressly defined in the Development Plan. Table 9.1 relates to a Hierarchy of Public Open Spaces. In relation to District Parks, it is stated that *‘The active recreational facilities in these parks usually include playing pitches, courts and multi-use games or playground areas’*. The proposed recreational uses do not adhere to the above definition of active recreational uses which are all external recreational uses.

5.2. Natural Heritage Designations

5.2.1. The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

5.3. EIA Screening

5.3.1. The proposed development is not within a class where EIA applies.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Grounds of Appeal may be summarised, as follows:

- The Dun Laoghaire-Rathdown County Development Plan 2022 to 2028 defines a ‘Leisure Facility’ as

“A building or part thereof or land which may be available to the public on payment of a charge or free of charge and which may contain a theatre, cinema, concert hall/music hall, conference centre, bingo hall, bowling alley, skating rink, or children’s/teenager’s games centre.”

- The proposed uses which have been refused as part of the Split Decision on Reg. Ref. D22A/0269, i.e., ‘Mini golf’ and ‘electronic games’ fall within the definition of ‘Leisure Facility.’
- The change of use of Nightclub on Level 02 to Restaurant will create a more inclusive environment – which aligns with the Vision of the Dun Laoghaire-Rathdown County Development Plan 2022 – 2028.

- A Grant of permission for the proposed change of use as detailed by Reg. ref. D22A/0269 is the appropriate outcome.
- In defining the proposed use as a “Leisure Facility”, (with which the Appellant concurs), the Local Authority Planner highlights that the use is not listed specifically in the Objective ‘F’ matrix of ‘Permitted in Principle’ and ‘Open for Consideration’ uses but ignores its specific reference in the Policy Objective SL049.
- The Applicant, as requested, submitted Further Information to the Planning Authority on 12 July 2022 and, in doing so, clarified that the proposed Recreational use would include:
 - An 80 no. to 100 no. seat Restaurant; and
 - Adventure/ Play Area with Mini-Golf and Electronic Games.
- The DLRCC *Planners Report* dated 3 August 2022 and the subsequent Decision by the Planning Authority to refuse permission for the change of use from the nightclub to recreational use is based on the premise *that ‘there is no scope for the planning authority to consider a grant of permission for this proposed use’*, and states that this represents a material contravention. The Appellant does not agree with that opinion.
- The Council refusal refers, inter alia, to material contravention. The Board is empowered to Grant permission for reasons including those set out in Section 37 (1) & 37 (2) of the Planning and Development Act, 2000 (As amended).

6.2. Planning Authority Response

6.2.1. A response was received from the Planning Authority which states:

‘...the Board is referred to the previous Planner’s Report. It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.’

6.3. Observations

6.3.1. No observations are recorded on file.

6.4. Further Responses

6.4.1. No further responses are recorded on file.

7.0 Assessment

7.1. Having inspected the site and having examined the application details and all other documentation on file, including the contents of the appeal, and having regard to relevant local/ regional and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development/ Zoning
 - Retail Use
 - The continued Sale and Consumption of alcohol on the premises
 - Recreational Use/ Leisure Facility Use
- Other Issues
 - Material Contravention
 - Appropriate Assessment

7.2. Principle of Development/ Zoning

7.2.1. The proposed uses include retail and recreational use.

7.2.2. Retail Use

7.2.3. Retail use is not identified as a use which is 'Permitted in Principle' or 'Open for Consideration' on lands zoned Objective F. The existing retail unit, which is located on Levels 01 and 02, has a substantial floorspace and forms part of the larger Icon Centre which has an overall floor space of 4,852 sqm.

7.2.4. The existing retail unit is in use as a Golf Shop and the retail floorspace for which retention permission is sought, and equates to 10 sqm, is contained entirely within the existing building. The main Golf Facility/ Golf Club element of the overall site is

located in the centre of the subject racetrack, further to the east. A Golf Facility is a use which is 'Open for Consideration' on lands zoned Objective F.

- 7.2.5. Having regard to the established uses on site and the scale of retail use proposed, I am satisfied that an additional retail floorspace of 10 sqm is acceptable. I am further satisfied that the said additional retail floorspace of 10 sqm for use as part of the established Golf Shop is consistent with Site Specific Zoning Objective 49 for the overall Racecourse lands.
- 7.2.6. *The continued Sale and Consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258*
- 7.2.7. In relation to the consumption of alcohol on the premises, the proposed development description states '*Planning permission is sought to permit the continued sale and consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258*'.
- 7.2.8. The existing uses within the subject Icon Centre/ Pavilion Building are shown to include Leopardstown Racecourse Hospitality Pavilion primarily on Levels 00, 01 & 02, the Icon Centre primarily on Levels 00, 01, 02, 03 & 04 and the Golf Shop on Levels 01 & 02. The internal floor plans for a substantial part of Level 02, all of Level 03 and part of Level 04 have the appearance of a Nightclub and include the following note: '*Internal Layout of ICON Centre to be confirmed by tenant.*'
- 7.2.9. It is noted that under the assessment of the previously permitted development on site, as planning reg. ref. no. D17A/0258 refers, the current non-conforming nightclub use was deemed to be supportive of the said Specific Local Objective, 49.
- 7.2.10. I would agree with the appraisal of the Local Authority Planner that the use of the existing terrace (c. 117 sqm) at Level 02 for the continued sale and consumption of alcohol on the premises is in keeping with the permitted use of this part of the building, as per permitted under planning reg. ref. no. D17A/0258. I would further agree that the location of this existing external terrace on the northern side of the building, adjacent to an existing service yard and away from any nearby sensitive receptors is acceptable in terms of potential nuisance impacts.
- 7.2.11. I am satisfied therefore that the continued Sale and Consumption of alcohol on the premises, which includes the existing external terrace as granted by D17A/0258 is acceptable. In the event of a Grant of permission being issued for this element of the

overall development, all relevant conditions attached to planning reg. ref. no. D17A/0258 should be complied with, in full, and a condition to this effect should be applied.

7.2.12. Recreational Use/ Leisure Facility Use

7.2.13. The proposed recreational use is in the form of

- an 80 to 100 seat restaurant & bar at Level 02, and
- a recreation area at Levels 03 & 04 in the form of an adventure / play area suitable for all ages.

7.2.14. The Applicant states in the Response to the Request for Further Information, in relation to the proposed restaurant and bar at Level 02, that the area will remain much as before with the addition of accessible toilets and a small kitchen area. It will also include access to the terrace.

7.2.15. In relation to the recreation areas at Levels 03 & 04, it is stated in the same said Response that this will be an adventure/ play area suitable for all ages. Examples of the type of activities are stated in the application documentation to include mini-golf, electronic games, etc.

7.2.16. The Local Authority Planner and indeed the Applicant, as noted in the Appeal submission, both consider the proposed recreational use to constitute a '*Leisure Facility*' use. A definition for a Leisure Facility is provided in Section 13.2 of the Development Plan and is quoted above in Section 5.1.10 of this Report.

7.2.17. A further definition for a 'Commercial Leisure Facility' is provided in Section 6.4.2.13 of the Plan, i.e., '*Commercial leisure facilities are those run on a profit basis and include cinemas, family entertainment centres such as bowling, indoor children's play centres, fitness centres, gyms, swimming pools etc.*' In my opinion, the type of recreational activities proposed within the adventure/ play area on Levels 03 & 04, i.e., mini-golf, electronic games, and the description of same by the Applicant as being 'suitable for all ages' falls more within the definition of a Commercial Leisure Facility as a family entertainment centre.

7.2.18. Active recreational amenities, are not expressly defined in the Development Plan however in Table 9.1, which relates to a Hierarchy of Public Open Spaces and with

specific reference to District Parks, such active recreational amenities are stated to include *'playing pitches, courts and multi-use games or playground areas.'*

- 7.2.19. The type of internal Leisure Facility use/ activities proposed do not, in my opinion, constitute an active recreational amenity. Similarly, the existing uses within the Icon Centre Pavilion Building do not, in my opinion, constitute an active recreational amenity.
- 7.2.20. A Commercial/ Leisure Facility is a distinct use in of itself. A Leisure Facility use is not identified as a use which is either 'Permitted in Principle' or 'Open for Consideration' on lands zoned Objective F. It is noted that a Leisure Facility is a use which is, however, 'Permitted in Principle' on, for example, lands zoned Objective DC (*'To protect, provide for and/or improve mixed-use district centre facilities'*), Objective MTC (*'To protect, provide for and/or improve major town centre facilities'*), Objective W (*'To provide for waterfront development and harbour related uses'*), Objective MIC (*'To consolidate and complete the development of the mixed-use inner core to enhance and reinforce sustainable development'*) and Objective MOC (*'To provide for a mix of uses which complements the mixed-use inner core, but with less retail and more emphasis on employment and services'*).
- 7.2.21. The Applicant submits that the proposed Leisure Facility use satisfies Specific Local Objective, no. 49. For ease of reference, the wording of the said objective is as follows:
- *'To support the status of and continued viability of Leopardstown Racecourse as one of Europe's premier racetracks and a major leisure facility in the County by encouraging its future development and facilitating the development of supporting facilities.'*
- 7.2.22. As part of the assessment of the planning case by the Local Authority Planner, reference is made to the assessment of the previous planning application regarding the current non-conforming nightclub use on site and the consideration that such a use was deemed to be supportive of the said Specific Local Objective, 49. I would agree with the assessment in this regard.
- 7.2.23. The Commercial Leisure Facility Use, i.e., the Restaurant and Adventure/ Play area is proposed to be located on Level 02, 03 & 04. The proposals would result in most of the building, excluding the existing retail area and hospitality pavilion being

devoted to use as a Commercial Leisure Facility. In my view, such a proposal conflicts with the intended purpose of the Specific Local Objective, No. 49.

7.2.24. I am therefore satisfied that the proposed recreational use constitutes a Commercial Leisure Use as defined in the Development Plan and that such a use conflicts with the objective 'F' Open Space land use zoning, the Objective F 'Open Space' zoning objective of lands, i.e., "*to preserve and provide for open space with ancillary active recreational amenities*" and Specific Local Objective, no. 49. On this basis this element of the proposed development should be refused.

7.3. **Material Contravention**

7.3.1. The Applicant raises the issue of Material Contravention in the Appeal and includes reference to the powers of the Board under Section 37 a) & 37 b) of the Planning and Development Act, 2000 to 2023, to Grant permission in such circumstances.

7.3.2. As part of the Split Decision issued by the Local Authority and with specific reference to the proposed '*Change of use from a nightclub to recreational use on areas shown on the drawings on levels 2, 3 & 4*', the 1 no. reason for refusal references a Material Contravention of the 'F' zoning objective of the site and Specific Local Objective No. 49.

7.3.3. As set out further above, I am satisfied that the proposed Change of use from a nightclub to recreational use is not appropriate in this instance having regard to the relevant Objective F zoning objective and Specific Local Objective no. 49. The said recreational use which constitutes a Commercial Leisure Facility is not a use which is either Permitted in Principle or Open for Consideration of lands zoned Objective F.

7.3.4. In my view, it is clear, that the said Change of Use, also contravenes both Zoning Objective F and Specific Local Objective no. 49. I am further satisfied that this contravention represents a material contravention of the said zoning objective and specific Local Objective no. 49.

7.3.5. While it is acknowledged that the Board has the power to Grant permission in the case of a Material Contravention subject to the criteria set out in Section 37 2) of the Act, it is my opinion that the subject proposal does not satisfy this said criteria. The proposed development is not of strategic or national importance, there are no identified conflicting development plan objectives, there is no specific justification for same having regard to the Regional Spatial and Economic Strategy and there is no

apparent justification of same having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

- 7.3.6. As stated, I am satisfied that the proposed development materially contravenes the zoning objective (F) and specific Local Objective no. 49.

7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. I recommend a SPLIT DECISION to:

GRANT permission for the following elements of the proposal:

- (a) Retention of an additional 10sqm of retail space on level 2.
- (c) The continued sale and consumption of alcohol on the premises which includes the existing external terrace as granted by D17A/0258.

For the reasons and considerations marked (1) hereunder and the conditions set out below.

REFUSE permission for the following elements of the development in accordance with the reasons and conditions marked (2).

- (b) Change of use from nightclub to recreational use of the identified areas on levels 2, 3 & 4.

9.0 **Reasons and Considerations**

Reasons and Considerations (1)

Having regard to the established permitted uses within the subject building, the established surrounding pattern of development and established permitted uses, it is considered that, subject to compliance with the conditions set out below, the retained

and proposed development would be acceptable in accordance with the proper planning and sustainable development of the area.

Reasons and Considerations (2)

1. The proposed ‘Change of use from a nightclub to recreational use on areas shown on the drawings on levels 2, 3 & 4’, would materially contravene the ‘F’ zoning of the site and Specific Zoning Objective No. 49 which seeks *“To support the status of and continued viability of Leopardstown Racecourse as one of Europe’s premier racetracks and a major leisure facility in the County by encouraging its future development and facilitating the development of supporting facilities”*, it would likely set an undesirable precedent for further similar development in the immediate area, and would be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and retained in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 11th July 2022, except as may otherwise be required in order to comply with the following conditions.</p> <p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the</p>

	<p>terms and conditions of the permission granted on 22/06/2017 under Pl. Reg. Ref. no. D17A/0258, and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.</p>
3.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.</p> <p>At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the overall site.</p> <p>All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p> <p>Reason: To protect the amenities of property in the vicinity of the site.</p>
4.	<p>The developer shall control odour emissions from the premises in accordance with measures [including extract duct details] which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of public health and to protect the amenities of the area.</p>
5.	<p>Within 3 months of the date of the grant of this permission, the Applicant/ Developer shall submit proposals for the adequate storage for waste disposal and recycling facilities on site to the Planning Authority for written agreement.</p> <p>Reason: In the interests of public health and to protect the amenities of the area.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Frank O'Donnell
Planning Inspector

20th November 2023

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-314484-23		
Proposed Development Summary	Permission for retention permission is sought for an additional 10sqm of retail space on level 2. Planning permission is sought for the change of use from nightclub to recreational use. Planning permission is sought to permit the continued sale and consumption of alcohol on the premises.		
Development Address	Icon Centre, Pavilion Building, Leopardstown Racecourse, Foxrock, Dublin 18, D18C9V6		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes		
	No	√	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	√		Proceed to Q.3

3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?

		Threshold	Comment (if relevant)	Conclusion
No	√	N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold....N/a		Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	N/a	Preliminary Examination required
Yes	N/a	Screening Determination required

Inspector: _____

Date: _____