

3rd party response.

S.37

File With

SECTION 131 FORM

Appeal No

ABP— 319719

Defer Re O/H

☒

Having considered the contents of the submission dated/received

10-06-24.

from ^{3rd party} Clarion Quay Management I recommend that section 131 of the Planning and Development Act, 2000 be/not be invoked at this stage for the following reason(s):

no new material planning issues.

Section 131 not to be invoked at this stage.

☒

Section 131 to be invoked — allow 2/4 weeks for reply.

☐

Signed

[Signature]

Date

03-07-24

EO

Signed

Date

SEO/SAO

M

Please prepare BP — Section 131 notice enclosing a copy of the attached submission.

To

Task No

Allow 2/3/4 weeks

BP

Signed

Date

EO

Signed

Date

AA



Planning Appeal Online Observation

Online Reference
NPA-OBS-003546

C/Obs = 10-06-24

Online Observation Details

Contact Name
David Ward

Lodgement Date
10/06/2024 15:29:35

Case Number / Description
319719

Payment Details

Payment Method
Online Payment

Cardholder Name
Anna McGuinness

Payment Amount
€50.00

Processing Section

S.131 Consideration Required

☒ Yes — See attached 131 Form

☐ N/A — Invalid

Signed

EO Litz Clellene

Date

18-06-24.

Fee Refund Requisition

Please Arrange a Refund of Fee of

€ 50

Lodgement No

LDG— 072730-24.

Reason for Refund

Not obs is 3rd party response to 1st party appeal.

Documents Returned to Observer

☐ Yes ☒ No

Request Emailed to Senior Executive Officer for Approval

☒ Yes ☐ No

Signed

EO Litz Clellene

Date

19-06-24.

Finance Section

Payment Reference

ch_3PQ9E3B1CW0EN5FC09tNWETD

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount

€

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board Member

Date

Date

Observation on 1st Party Appeal. 1, North Wall Quay on behalf of Clarion Quay Management Company CLG, The Community Office, 1 Block 3, Clarion Quay Apartments, IFSC, Dublin 1.

Closing Date for Observations Monday 10th June 2024.

Observation Fee €50

PA Ref: Dublin City Council 3274/24

ABP Ref: ABP-319719-24

**To An Bord Pleanála,
64 Marlborough Street,
Dublin 1.**

3rd Party Observation on 1st Party Appeal of Decision to Refuse Proposed Office Demolition and Office Redevelopment of the CitiGroup Building, 1 North Wall Quay, for NWQ Devco Limited made on behalf of Clarion Quay Management Company CLG, c/o David Ward, The Community Office, 1 Block 3, Clarion Quay Apartments, IFSC, Dublin 1.

Introduction.

We, the undersigned have been asked to submit this Observation on behalf of Clarion Quay Management Company CLG. (CQMC).

By email dated 16th May 2024 the Planning Authority invited CQMC to submit an Observation to An Bord Pleanála.

It is our overall reaction that the 1st Party Appeal makes many changes to the original Planning Application, as lodged and adjudicated on by the Planning Authority.

While these changes do not address the fundamental and outstanding Reasons for Refusal, they are such that essentially a New Application has been put before the Bord for its adjudication and without the Original Application having been Withdrawn.

CQMC is a voluntary board representing the residents and businesses in the Clarion Quay complex. In making a 3rd Party Appeal it pointed out specifically the lack of information and lack of assessment of the impacts of the proposed development on the receiving environment.

It fully endorsed the 3 No. Reasons for Refusal included in the Decision of the Planning Authority, which was made after due process and consideration of the original Application in the full light of the City Development Plan.

As a voluntary body, CQMC therefore relied to a large extent on the reports and analyses made by the Planning Authority, and which led to its Decision to Refuse.

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The changes made in the 1st Party Appeal have not been analysed by the Planning Authority and then made available to the public. Thus 3rd Parties are deprived of their wealth of skills and expertise.

If the Bord decides to adjudicate on the new proposals, rather than the Original Application submitted by the Applicant, we consider that there would be a deficit in due process and fairness. The short time which the PA was given to assess what is essentially a New Application may result in the Bord itself receiving a PA assessment which has been curtailed for this reason.

We have already pointed out the deficit in the assessment of the environmental impacts of the proposed development, which do not address even basic standards of analysis, thus not allowing objective conclusions.

We consider that cumulatively this lack of environmental information, together with the absence of analysis of the Applicant's last-minute changes by the Planning Authority, create a very serious deficit in public information. This lack of information is, we consider, in breach of the Aarhus Convention and could form the basis for a Judicial Review.

The Bord has also given only 28 days to the Planning Authority to make its own Observation. Within this timeframe it is expected not only to assess the 1st Party Appeal, but also to assess what is, in effect, a new Planning Application. This puts huge pressure on the Planning Authority, upon which 3rd parties must rely for detailed analysis. This is a further erosion of the rights of 3rd parties to equity in the sharing of environmental information.

For, example, the absence of any reference to the CQE basements and carpark entrances means that from the bottom up we cannot rely on any part of the design such as whether there is sufficient freeboard to change the Flood Risk category in order to permit offices and the Gaiety School of Acting below ground level. There are also potential knock-on effects on potential flooding of the basements of CQE.

Subject to the above, we will give a brief summary of the last-minute changes proposed by the Applicant and what we consider will be their effect, if any, on the substantive Reasons for Refusal.

The 1st Party Appeal has in our opinion studiously avoided dealing with vital issues raised in our Submission and by the Planning Authority in its Reasons for Refusal.

The outstanding issues from our viewpoint are: -

- The proposal is private development led, not City Development Plan led.
- The revised VIA continues to ignore views from the local environment.

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- The applicant refuses to fully report on or acknowledge the impacts on the existing mixed use Clarion Quay Estate.
- The applicant fails to acknowledge that any increase in height is dependent on the requirement for a substantial residential element as set out in Appendix 3 of the CDP.
- The applicant fails to accept that the Docklands Development has already provided for a balance of mixed uses.
- The applicant continues to fail to acknowledge knock-on effects of unbalanced single use on regional transport infrastructure which is already inadequate.
- The applicant has consistently persisted in ignoring the 2 no. basements and underground parking of CQE
- The ignoring of these existing basements and consequently of ground flood flows invalidates the reliability of engineering and architectural construction assumptions.
- The applicant has still not provided a real-time traffic survey that would fairly report on existing unauthorised parking by cars and delivery vehicles and the resulting congestion.
- By continuing failure to provide a traffic survey, the applicant has not yet acknowledged that the existing Citibank occupants have blocked off the authorised service bay for the use of private cars, thus further adding to unauthorised parking and congestion and had not rectified the matter at the date of this Observation.
- The revised external delivery area is essentially for dropdowns and does not make provision of parking bays to facilitate the time taken to unload and load supplies.
- The applicant continues to avoid a full and fair assessment in relation to Daylight, Sunlight and Overshadowing of existing residential properties.
- The applicant still fails to acknowledge the loss of Health and Amenity to existing residential and other uses and the concomitant serious reduction of existing property values in the award-winning CQE.
- The revised ground floor plan of the ramp area proposed as a linear “park” is further eroded by the revised entrance to the bicycle parking and now clearly shows the extent of the lightwell to the proposed basement below and the consequent loss of the suggested amenity.
- The development is overall a bland, amorphous, speculative commercial block lacking any architectural innovations or civic landmark function.
- Despite our Submission, there are still inadequate and very small-scale elevation drawings and sections, which with the continued ignoring of existing basements, make it difficult to fully assess the existing and revised proposals.
- The request for a 10-year permission suggests that this is a premature speculative proposal which does not account for current or future sustainability requirements and does not include final or definitive testing and analyses of the current site conditions.

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- It is our view that the Solicitor's letter merely repeats the Applicant's views and does not give a fair and unbiased legal opinion.

Appendix 3 of DCDP

The applicant's justification for the quantum of the application which is required for a building qualifying as a Landmark/Tall Building is given in the submitted report *Compliance with Appendix 3 of the DCCDP 2022-2028 by John Spain and Partners*. In order to comply, the building should have a residential component. The report dismisses this completely by simply stating that '*the subject development does not include any residential component and therefore Table 1 is not directly relevant*'. p3. It then proceeds to refer to Tables 3 and 4 of the Appendix relating to *Height Strategy* which we address below.

Exemplary Architecture/ Visual Impact and Cityscape Analyses

In this document the applicants argue that the proposed development is an exemplar of contemporary architectural design and urban placemaking. The building's height is described as a landmark which would give coherence to the city centre both locally and from extended vistas with geometry relating diagonally to the quadrangles in Trinity College and directly to Merrion Square West. These geometries do not exist either at visual/ground level nor at map level., There is no intrinsic historic or current connection with Trinity College and the site, and Merrion Square West / Merrion Street Lower are visually punctuated by Victorian buildings on Fenian Street. This is congruent with Dublin's famed low-level skyline which preserves the integrity of the historic Georgian core and provides true legibility to the city centre. The DCDP objectives of providing a sustainable, densely populated city while preserving this skyline allows Dublin to be viewed on a global stage as a city which is attractive to residents, tourists and employers. The careful siting of tall buildings, as per the DCDP and permissions given to date, in 'clusters' demarcating contemporary hubs within the city, are key strategic moves to consolidate this. The *City Designer Response* submitted states that '*Due to the emerging townscape of larger scale buildings both inside and outside the Conservation Area, the proposed development would provide a more coherent context for the protected structures in the proximity of the site at North Wall Quay.*' p4 This is demonstrably untrue within the considered zoning of the area and the dominating aspect of the proposal as shown in the wider visual imagery provided in the context of these buildings. The presentation of a large office block as being composed of 4 (now 5) blocks which constitute '*a cluster in its own right*' p6 *ibid* on a site which is not designated as appropriate for a landmark building, is completely contrary to the DCDP and the tenets of good urban planning and placemaking. To grant permission for this would set a dangerous precedent for ad hoc commercially driven and led development throughout the city in inappropriate locations permanently injuring the local and wider context.

It is further posited by the applicants as a key location in their statement that the site is a strategic location on the Liffey being at the point at which the river becomes the estuary.

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This actually happens between the Custom House, the original IFSC and the Epic Museum at George's Dock and is clearly demarcated by the Sean O'Casey Bridge and the Cupola of the Custom House.

The report *Compliance with Appendix 3 of the DCCDP 2022-2028 by John Spain and Partners*. describes the architectural composition of the building as '*a carefully considered building form*' which '*responds to its docklands riverfront setting*'. '*The overall envelope is perceived as a light crystalline aesthetic due to the angular articulation of the of the different planes, mainly in the south, east and west elevations.*' *Ibid* p11.

Much detail is devoted to the south elevation to the river which has a broken building line reflected in part by the geometries of the front glazing. The side (east and west) elevations and particularly the north elevation have no such treatment and comprise a series of glass boxes. It is clear from the application that the applicants do not give equal weight to the public realm on any of these 3 sides of the proposed building as given to the front, river façade. The inadequacy of the '*community park*' to the east façade has been covered in detail in our separate 3rd party Appeal and original submission to DCC. We would further note that the description of this as a contribution to the permeability of the site acting as an urban connection does not stand. It is the proposed creation of a thoroughfare, partially blocked by bicycle stands and a large skylight to the first level of basement, on the eastern edge of the site, parallel to the existing pedestrian street Excise Walk. True permeability would have included access through the buildings on the site for the public.

The single architectural change made in response to the Refusal is described in *Henry J Lyons' Design Modifications* under '*Proposed reductions in building size and incorporation of façade set-backs.*' p3

'In the first instance it is submitted that the scheme as submitted is appropriate for the context of the application site. The justification for the proposal has been set out in the application documents and further set out in the appeal documents.

The appealant [sic] proposes that, should the board share the concerns of Dublin City Council, design modifications can be implemented to the refused design, by condition, to address the concerns raised in the decision in respect of:

- 1. Building Height & Massing*
- 2. Sunlight & Daylight impact upon neighbouring properties*
- 3. Overbearing impact upon neighbouring properties*

Proposed design modifications to refused design:

Building footprint reduced on Levels 06, 07 & 08 to allow increased facade set-backs and reduced parapet height at the building's eastern end to provide a stepped/height transition to the neighbouring buildings.

Positive impact of design modifications:

- 1. Reduced building height & massing at the eastern end of the application site.*
- 2. Reduced sunlight / daylight impact upon neighbouring properties*

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3. *Reduced overbearing impact upon neighbouring properties p4*

Page 5 of this document shows a detail of the same giving a proposed separation distance of 25.075m in total from level 06 (original 16.375m) ie a set back of 8.7 m for levels 06, 07 & 08.

'The appealant has prepared and is submitting an additional section drawing (0302) to An Bord Pleanála in response to the below commentary from the Dublin City Council's Planners Report:

"Similarly, the proposal is a/so likely to have an overbearing impact on the residential blocks to the rear given their proximity to the boundary of the site separated only by a laneway. In particular, the Clarion Quay Apartments are likely to be significantly negatively impacted due to the fact that the proposed build elements B and C to a certain extent wrap around the western block (Block 12) affecting both sides of the block.

It is noted that the Section drawings submitted are limited and do not clearly show the impact of the massing of the proposal on the Clarion Quay Apartments.

Due to the proximity of the new building to the residential blocks, and limited separation distance provided only by a laneway, the overbearing impacts are likely to be considerable."

*The appealant submits that the scheme as submitted is appropriate for the context of the application site. The additional section drawing demonstrates that the original design has responded [sic] sensitively to its proximity to neighbouring properties by significantly reducing the massing of the building along the Clarion Quay boundary interface.'*p7 Ibid

This refers to Partial Section CC (Drawing 0302) which cuts through the section of the proposed development between Commons Street, Clarion Quay/Alderman Way, Blocks 11 & 12 of CQE, and the amenity Courtyard of Same. This is titled: *'Partial Section CC (Drawing 0302): Drawing not submitted as part of original planning application, however design remains unchanged.'* Ibid

This drawing shows the separation distance between the proposed development and Blocks 11 & 12 of CQE with the section being taken at the lowest part of the roof. The change proposed is the removal of the easternmost 8.7m of office space over 3 floors.

No other changes to the massing, height or volume are proposed. The CQE wraps around the proposed development to the east and north. The effect of the proposed building on the entire estate will be remain overwhelming. These amendments only materially address the effect on Blocks 1/2/3 and partially at that.

A revised Section AA (West to East) is submitted to show the change. A revised East Elevation showing the areas for setback (red line) has also been submitted. This, however, still shows only New Century House as context. A true elevation should include the drawn rear elevation of Blocks 7 & 8 of CQE which, as the lowest Blocks in CQE, are considerably

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lower than New Century House. There is also no submitted section which shows the relationship between the proposed development and the amenity garden to CQE. There are no drawings of the North façade showing the changes proposed to the East Elevation.

As made clear in the Planners assessment and our 3rd party appeal, the lack of information regarding the true context of the surrounding, primarily residential and amenity buildings, means the application is incomplete and cannot be assessed. Inter alia this includes the omission of key drawings (contextual Plans, Sections, and complete Elevations), overall separation distances from all adjacent buildings, the relative heights and conformation of the same specifically with regard to windows and winter gardens, and the known surrounding conditions e.g. the two immediately adjacent basements to the CQE. As we have also noted, there are no Visual Images submitted to show the effect of the proposal on the immediate surrounds.

Sustainable design and Green Credentials

We fully support a conclusion by the planners that the applicant has not considered building a smaller quantum as a development option. Based on the information submitted regarding the required floorplates for businesses, the applicants have not submitted a feasibility study or analysis of what could be achieved by building to the permitted height under the zoning. They have submitted a comparative study of R&E versus demolition and new build based only on the stated quantum.

The result is a proposal to demolish a perfectly usable building, less than 25 years old and which has already emitted a lot of carbon emissions in its making and replace it with a building which is a gross overdevelopment of the site i.e. a building that is 17 floors above ground with 3 full levels of basement so it is, de facto, a 20 storey building.

As with its sister building New Century House, it could be retrofitted instead to achieve a higher performing and desirable building if these were the objectives. The new embodied carbon forecast by the applicant should, we believe, include the 25 years of wasted “life” of the existing building’s embodied carbon.

The proposed development is completely at odds with the national and EU obligations and commitments to effectively reduce the national carbon budget by 2030, which includes a 50% reduction of emissions from all property development, including housing. How this budget is allocated is critical to the outcomes of the national plans and commitments to Climate Change. We submit to the Bord that these should be carefully considered when assessing major speculative developments like the proposed development, which propose demolition ahead of lifespan, and which, in this case, has already been deemed contrary to good planning and the national spatial strategy and DCDP by the LA.

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Economic Justification

The applicant's economic justification hinges on the floor plates deemed to be required in Dublin to ensure its place as an attractor for global companies. We note that the Central Bank has recently cancelled its plans to extend into the premises it bought for €157 million. Further to this, the R&E of New Century House on Commons Street which was recently undertaken has been successful and provides accommodation for a global technology company.

Environmental Impacts

The applicant has provided new information about freeboard adjustments to their scheme. Given the Applicant has now failed twice to recognise there are basements on two sides of their major "landmark" development proposal, we urge the Bord to reject the design plans and conclusions they make about their impacts as irrelevant as they are fundamentally erroneous. A full analysis would include impacts and likely counter measures being needed in CQE to address risks to both it and the wider area from this design

Daylighting, Sunlighting and Overshadowing

We refer the Bord to our previous detailed submission in this regard. We note that the revised submission by BPC does include ASPH and they have expanded the window analysis undertaken of the buildings in CQE. However, we would emphasise that they have not revised the area of the amenity garden to CQE which was assessed and which we have clearly shown does not include the full extent of the garden. The area omitted is to the south and will be overshadowed. They have also not analysed the south facing creche windows.

The revised study of the windows they have included shows serious loss of light to a number of windows and does not include analyses of the winter gardens to CQE. The overbearing nature of the development has not been addressed.

The serious and excessive loss of amenity to the residents of CQE appears to be regarded by the applicant and their agents as an acceptable consequence of this commercially driven proposed development. It will have a profoundly deleterious effect on the CQE and a knock-on effect on the wider area and its development as it becomes an undesirable place to reside which inevitably leads to the deterioration of the public and private realms. This is entirely contrary to all objectives of the DCDP and the promotion of a sustainable, liveable city.

Asset Value Injury

Further to this, we concur with the DCC planner's observation that asset values for Clarion Quay are likely to be negatively impacted by this proposal. This would still be the case with the amendments which make little substantive change. The proposal clearly takes away

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materially from the amenity, creche and public spaces of the CQE as well as the interiors of the homes which were specifically designed to have good natural light. The impact on the value of the assets of clarion quay estate alone should be grounds for a refusal by the Bord.

Conclusions

In asking the Bord to reach a Decision to Refuse Permission, we respectfully draw attention to the following Reasons for Refusal given in the Fourth Schedule of the Planning and Development Act 2000 (as amended): -

- 1. (e) deficiency in the road network.
- 1. (f)(2) increased road traffic.
- 10. (a) infringement of existing building line.
- 10. (c) injure amenities, depreciate property values.
- 10. (d) create serious traffic congestion.
- 10. (g) prejudicial to public health.

We are dismayed at the consistent failure of the Applicant to take a realistic view of the potential of the site. This started with the refusal to accept the guidance given at Pre-Application Consultation Stage.

There is still an absolute refusal by the Applicant to acknowledge the existence of the CQE, basements, a myth perpetuated by the Applicant in engineering reports and architectural drawings submitted to the Bord with their Appeal.

Both the VIA and the partial Sunlight and Daylight Studies and the Health Section of the EIAR, fail to give due consideration to the receiving environment and the loss of values therein.

There have been no traffic studies to examine existing congestion and future local road capacity, while the proposed revised commercial vehicle drop-off loop makes inadequate provision for loading and unloading.

There is a continuing denial that Appendix 3 requires a balanced residential element and that this already exists in the Docklands Development Scheme.

There is no recognition of the impact of a huge single use commuter development on the regional transport system.

The proposed public "park" is a narrow, congested strip to be formed from an existing vehicular ramp.

We submit that these issues were raised in our Submission but have been ignored by the

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Applicant in his Appeal.

We consider that the Applicant's failure to accept reality has been insulting to the existing community, and to the Planning Authority. This totally deficient Application has now been referred to the Bord.

We therefore respectfully ask the Bord to examine the 1st Party Appeal in the light of Section 138 of the Planning and Development Act 2000 (as amended) and to Refuse Permission.

1st Party Request for an Oral Hearing.

This is an unwarranted request in relation to a speculative office development which is in direct conflict with the Policy and Objectives of the Dublin City Development Plan and the proper planning and sustainable development of the area.

The proposed development is essentially only for the advantage of the Applicant and raises no strategic or infrastructural issues at national, regional or local level. We therefore consider that the Bord should not waste valuable and scarce professional and administrative time and public money in facilitating such a request, nor should it risk setting a precedent for every speculative development.

Declaration of Interest.

Mr Bird has already sent a Declaration of Interest to the Secretary of the Bord, He holds a Fee Per Case Inspector Warrant which is valid until 31/12/2024. He has no current files from the Bord.

Signed,

John Bird MIPI

BA(Mod), Master of Civic Design, Dip. Environmental Impact Assessment Management

Katharine Maurer

B(Arch) MA (Visual Culture)