



An
Bord
Pleanála

Inspector's Report

ABP-305215-19

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 and the provision of a Medically Supervised Injecting Facility (MSIF) at existing vacant basement level.

Location

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

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4121/18

Applicant(s)

Merchants Quay Ireland (Homeless & Drug Services)

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

| | |
|---------------------|--|
| Appellant(s) | Merchants Quay Ireland (Homeless & Drug Services) |
| Observer(s) | 1 Jeff Sheridan |
| | 2 James Lyster |
| | 3 Sandra Hughes |
| | 4 Carly Wosser |
| | 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 Margaret Cullen |
| | 14 Aisling Carabini |
| | 15 Elizabeth O'Connor |
| | 16 Joe Hynes |
| | 17 Licensed Vintners Association |
| | 18 Department of Health |
| | 19 Failte Ireland |
| | 20 Liffey Quays Residents and Traders Association |
| | 21 Michael O'Reilly |
| | 22 Jade McCann |
| | 23 Nuala Freeman |
| | 24 Investi Limited |
| | 25 St Audoen's National School Board of Management |

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

Date of Site Inspection

12/11/2019

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on the southern side of the Quays of the River Liffey in central Dublin. The site comprises River Bank House, a three-storey over basement building with a single storey block along the eastern side.
- 1.1.2. The basement of the building is currently vacant. The ground floor provides Merchants Quay Ireland (MQI) homeless and drug services (open access services), the first floor provides the associated MQI health centre and the second floor accommodates MQI offices. To the east of the site is a large Catholic Church and associated Franciscan Friary. To the west is the Four Court Hostel, to the rear is the Friary Close apartment block and St Audoen's national school. Further south, over Cook Street is St Audoen's Church and Park.

2.0 Proposed Development

- 2.1.1. On the 8th October 2018, Merchants Quay Ireland (MQI) applied for planning permission for the reconfiguration of their existing premises at Riverbank Building, 13/14 Merchants Quay. The building currently provides an Open Access Centre, providing drop-in services for food shelter and primary healthcare in a three-storey over basement facility.
- 2.1.2. It is proposed to provide a medically safe injecting facility (MSIF) at basement level, following the awarding of a licence to MQI. The proposed MSIF will open for three sessions Monday – Friday: 06.00 -10.00, 14.30-17.30 and 19.00-21.30. On Saturdays and Sundays, it is proposed to open from 06.00-10.00 and 15.30 -21.00. The proposed development also involves the demolition of the existing bathroom block, the provision of a new bathroom block and smoking area at ground level and works to the front and side elevations. This includes the provision of a sheltered queuing area on the north-western elevation.
- 2.1.3. In addition to the required documentation, the application was accompanied by the following:
 - Planning Report
 - Community Engagement & Liaison Report
 - Operations Plan
 - Invitation to Tender Documents

- Architectural Design Statement
- Civil & Structural Planning Report
- Letter of Consent from Franciscan Province of Ireland
- Letter confirming charitable status of Merchants Quay Ireland
- HSE Leaflet on Supervised Injecting Facilities

3.0 **Planning Authority Decision**

3.1. **Planning Authority Reports**

- 3.1.1. **City Archaeologist:** Proposed development is within the border of the Zone of Archaeological Constraint for the Recorded Monument DU018-020.
- 3.1.2. **Engineering Department, Drainage:** No objection subject to standard conditions.
- 3.1.3. **Planning Report:** Proposed development involves three elements, two of which - proposed façade upgrade and alteration, extension, demolition - are acceptable. Regarding the proposed MSIF, the Applicant should be requested to demonstrate that the queuing area is sufficient to accommodate the different groups of clients, to provide evidenced based assessment as to the likely numbers of new users and the likely catchment for the facility, and a justification for the hours of operation which appear to extend beyond those stipulated in the licence, with reference to international evidence. The applicant should be requested to provide details on the operation of the existing service during the construction phase. The applicant should be requested to provide a policing plan, accompanied by a map of all homeless and other social support services within 500m of the site, a statement on the catchment area and a statement on the management of the service. Noting policy QH30 and section 16.12 of the development plan, the applicant is requested to demonstrate how the proposed development can operate without impacting the sustainability of the area. Recommendation to request two items of further information.

3.2. **Prescribed Bodies**

- 3.2.1. **TII:** Recommends that a s49 condition be attached to any grant of permission.
- 3.2.2. **Failte Ireland:** Recognises the need for such a facility and do not object in principle but believes that the concerns of local tourism operators should be taken into consideration.

3.3. Third Party Observations

- 3.3.1. A large number of objections to the proposed development were submitted to the Planning Authority. The issues raised included the proximity to a primary school and the impact on the children and staff, the concentration of such facilities in the immediate area, anti-social behaviour problems and the impact on the residential amenity of residents and visitors to the area.

3.4. Further Information

- 3.4.1. On the 29th November 2018, the Planning Authority requested the applicant to address the two matters:
- 1 Detailed and comprehensive assessment that demonstrates that the proposed development will not result in an overconcentration of such facilities in the area and can operate without undermining the sustainability of the neighbourhood.
 - 2 Operational Management Plan , providing detailed of number of clients, frequency and duration of stay, regulation of client visits, justification for hours of operation, details of off-street queuing capacity and overspill queuing, Public Realm Management Strategy, Policing Plan, and a plan for operation during the construction phase
- 3.4.2. On the 28th June 2019, the applicant **responded to the FI request**, with a planning report, three maps showing services in the area, an Architectural Design Statement, an MSIF Operations Plan, a Public Realm and Community Engagement Plan and a letter from An Garda Síochána.
- 3.4.3. The planning report submitted with the FI response states that three maps have been prepared showing 39 no. social services within 500m (map 1), 17 no. homeless services within 500m (map 2) and the four addiction services (map 3). The response states that only map 3 shows services similar to MQI and at 4 no., this is not an over concentration. The response notes that not all clients of MQI are homeless (map 2), nor are all social services (map 1) available to only those that are homeless. It is submitted that as no MSIF exists, there cannot be an overconcentration of this nature of facility. The only other needle exchange programme is 800m away. It is submitted that as the existing MQI already offers a homeless and drug service, the proposed use should not be considered to be an additional use. The applicant asks

that due regard be given to the fact that the MQI site has been chosen by the HSE as an appropriate facility to trial the new social service. The applicant notes that should permission be granted the existing Night Café will be relocated, to reduce the active uses on the site.

- 3.4.4. In response to the request regarding the management of the proposed facility, the response states that between 60-100 no. clients are expected to use the MSIF daily, with before 9am and after 8pm expected to be the busiest. The response states that the majority of those who intend to use the MSIF already use the existing MQI services. Regarding catchment area, research shows that the success of an injecting facility is based on it being located within the city's main area for drug related behaviour. Research demonstrates that people do not travel to use needle exchanges and people do not travel from outside of a city to use an MSIF. Regarding the submitted operations plan, the FI response states that MQI have extensive knowledge of international best practice for MSIF and while there is no precedent in Ireland, the plan is an amalgamation of international best practice tailored for an Irish context.
- 3.4.5. Responding to the regulation of numbers of clients, the applicant states that the proposed building has been designed to separate the three identified users of the building. Monitoring and regulation of the future MSIF clients will occur through queuing control, staff allocation and separation of access and egress points. The hours of operation (Monday – Friday: 06.00 -10.00, 14.30-17.30, 19.00-21.30. Saturdays and Sundays, 06.00-10.00 and 15.30 -21.00) were informed by the HSE and are in line with international best practice. Consideration was given to minimising the impact on the community, whilst addressing the needs of the service users. Responding to the Planning Authority's concern regarding queuing, it is stated that the queuing facility is discreetly located off-street to provide privacy and will be monitored by CCTV and MQI staff.
- 3.4.6. The Public Realm and Community Engagement Plan submitted in response to item 2(g) details MQI's involvement with the community and public realm around their facility and the proposed MSIF. 11 no. roles are listed and Appendix 1 provides a detailed schedule of duties performed by the Community Engagement team. It states that four routes cover four areas (maps 4 to 7). The response states that international evidence shows that MSIF's do not increase drug use, drug dealing or

crime as they are largely located in areas where public injecting already occurs. A lighting plan aims to ensure a well-lit public realm all around the MSIF.

- 3.4.7. In response to the Planning Authority's request for a policing plan, the applicant states that a letter from the Detective Superintendent of the Garda National Drugs & Organised Crime bureau is submitted. The letter from An Garda Síochána stated that following legal advice, it is not deemed appropriate for An Garda Síochána to get involved in the planning application process. As an independent impartial organisation, An Garda Síochána cannot be seen to influence the outcome of an application. The letter notes that a local policing plan is currently in operation for the Merchants Quay area. Should permission be granted, An Garda Síochána may then engage in producing a plan catering for the SIF. This would involve a collaborative approach with all relevant stakeholders and would form part of an overall community impact plan.
- 3.4.8. In response to the question of construction whilst the centre remains open, a phasing plan is submitted.
- 3.4.9. The FI response details the visit of the Planning team to an MSIF in Paris, France. It is submitted that the location of the Paris facility, in the inner city surrounded by tourist attractions and residential areas is similar to the subject MQI site. It is submitted that the area has not been negatively affected by the MSIF. Details of the Paris facility are provided. It is submitted that the facility is supported by local businesses as it has taken public drug use away from their customers. Details of MSIF in Sydney, Vancouver, Toronto, Copenhagen, Strasbourg and Barcelona are provided. The conclusion is that 74% of MSIF's are located in the centre of town.

3.5. Reports on File following submission of FI.

- 3.5.1. **Planning Report:** The proposed facility, being the only one in the State must be assessed as a national facility that will serve not only the local community but also the wider city area and nationally. The ability of the area to accommodate this scale of use is the paramount concern. The Planning Authority must balance the needs of the entire community. It is considered that the proposed development cannot be accommodated in this area without contravening section 16.12 of the development plan. The area already accommodates a disproportionate quantum of institutional hostel accommodation, homeless accommodation and social support institutions.

The proposed development would result in an over concentration of such services and would undermine the sustainability of the neighbourhood. The area is more than an area with “already present drug scenes”, it is a residential community, an employment hub, a recreational area and a tourist hotspot. MQI have not identified how many new clients will use the facility. This will impact the safety of the wider area. The Planning Authority consider the proposed 18-month trial to be sufficiently long to contribute to a significant deterioration of the neighbourhood. The lack of a policing plan leaves a high degree of uncertainty. It is recommended that permission be refused.

3.6. Decision

3.6.1. On the 25th July 2019 the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:

1. 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.

4.0 Planning History

4.1.1. **PL29S.228820** (Planning Authority reg. ref 5850/07): Permission granted for change of use from children's court to day-care centre for social services

4.1.2. Planning Authority reg. ref. **0392/17**: Declaration sought by Temple Bar Company 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. Determination made that the development was Development which was Not Exempted Development

Adjoining Franciscan Friary

- 4.1.3. **3277/12**: Permission granted for the development will consist of alteration works to the Franciscan Friary Complex and Church of the Immaculate Conception 4-8 Merchants quay (a protected structure) on a site bounded by Merchants Quay and Winetavern street and Cook Street.
- 4.1.4. **2650/08**: Permission granted for refurbishment works at the Franciscan Friary, a Protected Structure.
- 4.1.5. **4189/03** - Permission was granted for retention for not more than five years of a portacabin serving as a security entrance lobby/reception to the Cook St. entrance, retention of CCTV mast and camera to car-park and overlooking Cook Street entrance; retention of three windows to existing offices and meeting rooms looking out to Cook Street where these are different to those for which permission was previously granted, all at Cook Street to rear of existing church at Merchant's Quay (protected structure) for the Franciscan Social Justice Initiative.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. Under the 2016 plan, the subject site is zoned **Z5 City Centre**, which has the stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. Permissible uses within Z5 include 'buildings for the health, safety and welfare of the public' and 'community facility'.
- 5.1.2. **Section 14.8.5** of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development.
- 5.1.3. **Development management standards** for Z5 zones include an indicative plot ratio of 2.5-3.0 and indicative site coverage of 90%. Policy **CHC4** and **section 11.1.5.6** refer to Conservation Areas.
- 5.1.4. **Section 5.5.11** of the development plan refers to Homeless Services and **Section 16.12** refers to standards for Institutions / Hostels and Social Support Services. It 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 such applications for such uses shall include the following: A map of all homeless and other social support services within a 500 m radius of application site. A statement on catchment area, i.e. whether proposal is to serve local or regional demand and a statement regarding management of the service/facility.

- 5.1.5. **Policy QH30:** 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.

5.2. **Liberties LAP**

- 5.2.1. The Merchants Quay area is located within the Liberties LAP boundary, in an area classified as The Historic Core. The plan outlines a series of economic, social, housing and tourist objectives for the area.

5.3. **Natural Heritage Designations**

- 5.3.1. The subject site is located 3.4km from the South Dublin Bay and River Tolka Estuary SPA and 4.2km from the South Dublin Bay SAC.

5.4. **EIA Screening**

- 5.4.1. Having regard to nature and scale of the development and the location of the site, 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent for the first party has appealed the decision of the Planning Authority to refuse planning permission. The appeal provides some background information to the services provided by MQI, to MSIF's in Ireland and to the proposed development. The appeal provides detail on the site context which is stated to be a 'prescribed and appropriate' location. The appellant notes that the City Council welcomes the proposed changes to the front elevation and states that the refurbishing of the facade would not be viable on its own. The appeal notes that the HSE tender document set out certain prescribed criteria for an MSIF. The subject site at Riverbank complies with this criterion as it will provide a welcoming atmosphere in an unremarkable building, will have CCTV coverage and it is within the Dublin Inner City as defined by the Development plan. The appeal provides a map of 39 no. 'social services' within 500m of the subject site, four of which provide addiction services. In setting out the planning application process, the appellant asks the Board to note that the applicant has made every effort to engage and consult with the Planning Authority.

6.1.2. The grounds of the first party appeal can be summarised as follows:

- The proposed MSIF has been identified by Government as an integrated public health project, which is promoted by the Department of Health with the HSE. The applicant has been selected to operate the facility on a pilot basis.
- The decision of the Planning Authority is contrary to the National Drug Strategy Reducing Harm, Supporting Recover A Health-Led Response to drug and alcohol use in Ireland 2017-2025, to reduce drug-related deaths.

Existing Environment

- MQI has one only service within 500m of the subject site. It is submitted that the Planning Authority has neglected its obligations to the marginalised drug users that would benefit from a MSIF.

- The homeless crisis has resulted in an increased homeless population in Dublin 8, proximate to the subject site. The crisis has resulted in more people with addiction and health issues, increased public injecting and drug related littering in the area.
- It is submitted that it is inappropriate that the MSIF has been refused permission on the grounds of an over-concentration of social support services.
- The proposed facility would prevent overdoses, allow people to access vital support services including detox and rehab services, and reduce public injecting and drug litter. These would benefit local residents, business and the tourist economy.
- It is submitted that the proposed development would positively address the reason the Planning Authority gave for refusing permission.

Development Plan Policy

- It is submitted that in finding that the proposed development contravenes development plan policies on local economy, tourist and residents, the Planning Authority have given no consideration to the policies that support marginalised and vulnerable residents of the city. It is submitted that insufficient regard has been given to the provision of key social services.
- The Board is requested to have regard to section 2.2.4.1 of the development plan which refers to the Local Economic and Community Plan. Goal 11 states “Tackle the causes and consequences of the drugs crisis and significantly reduce substance misuse across the city through quality, evidence-informed actions”.
- The Board is requested to have regard to section 12.5.5 of the development plan which provides for the provision of new strategic infrastructure which would complement the range of neighbouring facilities existing in a neighbourhood.
- Objective SN15 and 22 refer to the optimum use of community facilities and the provision of healthcare facilities that are required by healthcare authorities.
- The Planning Authority failed to note Objective 2 of the Liberties LAP which seeks to “provide for an appropriate social and community infrastructure to support the existing population, which is growing and becoming increasingly diverse”.
- It is submitted that the proposed MSIF targeting the existing client group, complies with the development plan and the LAP.

Dublin 8

- The over-concentration issue needs to be considered in the context of homeless crisis in Dublin. A high proportion of the 10,000 homeless have addiction, medical and mental health issues. This results in greater public injecting and a need for more support services in the area needed. Dublin 1, 7 and 8 account for 42% of homeless people in the country.
- International evidence and experience points to the need to locate MSIF's in areas where potential clients are based.
- The statement in the Planning Authority's report that the facility will attract a nationwide client base is not based on evidence. It is submitted that the Planning Authority has not considered the detailed survey evidence and assessments demonstrating the predicted client numbers and catchment area. All research has shown that people will not travel long distances to use an MSIF. MSIF's provide a local need, already present in the city.
- The Board's attention is drawn to the Operations Plan submitted by the applicant to the Planning Authority. The plan details a Union of Improved Services, Communication and Education (UISCE) 2016 survey wherein 76% respondents identified themselves as homeless and a majority stated that they would prefer to be close to a clinic.
- It is submitted that the unique service proposed by the MSIF is directly influenced by the current needs of the area. The applicant wishes to confirm that the proposed development will serve a local client base.
- The MQI Operations Plan confirms: 60-100 clients are expected to use the MSIF daily. Before 9am and after 8pm are expected to be the busiest. Seven booths with a 20-minute maximum stay allows 21 no. medically supervised injections per hour. This will provide a minimum of 63 no injections prior to 9am and 31 no. injections after 8pm. 76% of people who inject drugs identify as homeless. There are 785 no. people homeless in Dublin 8. There is no evidence of people travelling from outside of a city to use an MSIF.
- An inner-city location was required by the HSE Tender specifically designed for the MSIF. The subject site is in the 'inner city' as per the development plan and is already operating homeless and drug related services at this location. The 6-10am opening hours, afternoon and evening hours and seven-day provision were

required by the HSE tender. The proposed development complies with this requirement.

- The further information response submitted to the Planning Authority shows the city centre locations and opening hours of MSIF in Sydney, Vancouver, Toronto, Copenhagen, Paris, Strasbourg and Barcelona.
- The Board is requested to consider this international experience and evidence rather than unfounded assertions. The Board is reminded that the tender has been awarded on a pilot basis and that the applicant is committed to working with the City Council to re-locate the Night Café to reduce active uses on the site

Policing Plan

- The appellant notes and understands the Planning Authority's concerns regarding policing. The appellant has received legal advice that the request for a detailed policing plan to be prepared and publicly available is ultra vires and invalid.
- The Board is asked to note that An Garda Síochána are key stakeholders in the delivery of the proposed development. They were part of the Working Group and Tender Committee and have engaged with the Department of Health and the HSE since the inception of this project, as confirmed by them in their letter at FI stage.
- The applicant was accompanied by high level representatives of An Garda Síochána at the pre-FI submission planning meeting. The Gardaí reiterated that a detailed policing plan could not be made public for security reasons and also would be premature in the absence of a grant of permission. It is noted that this was not mentioned in the Planning Authority's planning report.
- It is submitted that as the request for a Policing Plan is ultra vires, it is therefore not a valid reason for refusal. It is submitted that the Planning Officers of DCC are not qualified to judge if a policing plan is adequate, appropriate or effective, having no basis on which to assess such a plan.

Tourism Economy and Residential Amenity

- International evidence demonstrates the effectiveness of MSIF in improving the public realm of areas with an existing high proportion of drug users. The Board is referred to the 2017 study (appended to the appeal) "Public Health and Public Order Outcomes Associated with Supervised Drug Consumption Facilities: A Systematic Review". The following findings are noted: Five studies have

demonstrated the role of SCF's in addressing public disorder and six studies showed no change in police recorded incidents in the neighbourhood of an SIF.

- The Board is requested to rely on valid international evidence that demonstrates that such facilities can result in a reduction in public drug use and public disorder. It is submitted that the proposed development will not have an injurious impact on amenities.

Active Community Engagement and Public Realm Management

- It is submitted that the applicant shares the Planning Authority's concerns regarding the impact of the proposed MSIF on the public realm and established community. Measures have been put in place to ensure a successful integration.
- The voluntary community engagement team currently patrols the area as identified in Map 1 of the appeal submission. This will be reviewed and updated once the MSIF is operational. The team engage with those publicly injecting and collect any drug related litter.
- It is submitted that the impact of the MSIF on the local economy, tourism, residential amenity and the regeneration of the area would be beneficial.

Commitment to Management and Review of Pilot Project

- The Appellant requests the Board to grant permission and while recognising the Board's right to condition the operation of the proposed facility, also requests the Board to note that the HSE deemed an 18-month pilot phase appropriate.
- The HSE has specified that an Operational Governance committee oversee the practical and financial management of the facility. The committee will report regularly to a Monitoring Committee chaired by the HSE and with representation from the Department of Health, An Garda Síochána, Dublin City Council, UISCE and others.
- An independent external evaluation of the pilot phase will be carried out. The service must demonstrate that it has succeeded in accessing people engaged in high risk behaviours, that safer injecting practices are occurring and did not result in an increase in the frequency of injecting. It is submitted that the operation of the facility will be entirely results driven.

Conclusion

- The Board is requested to grant permission. They are requested to note that the Minister for Health has the power to impose conditions relating to medical supervision and clinical governance, matters outside of the scope of the planning system.
- Appendix A – Public Health and Public Order Outcomes Associated with Supervised Drug Consumption Facilities: a Systematic Review
- Appendix B – Letter from Senior Counsel

6.2. Planning Authority Response

6.2.1. The Planning Authority responded to the first party appeal as follows:

- The Planning Authority would like to re-iterate its very serious concerns regarding the proposed development of an MSIF and additional services at Merchants Quay. They consider that the additional service is likely to have a detrimental impact on the vitality and viability of this part of Dublin's historic city core. The Planning Authority is required to balance the needs of the entire community. The Planning Authority has yet to be satisfied that the proposed development can be accommodated without detriment to the area. The Board is requested to refuse permission.
- It was not the intention of the Planning Authority that An Garda Síochána would prepare the policing plan nor did they require An Garda Síochána to provide any detail which would compromise security.
- The Planning Authority sought a robust policing plan prepared by the Applicants which would have required elements of the 'Good Neighbour Policy' and the public realm management strategy and an input from An Garda Síochána. This plan is required in accordance with Policy QH30.
- In the absence of such a plan the Planning Authority consider that there is sufficient evidence to demonstrate that the development will not undermine the existing economy, the local residential community and the regeneration of this area.

- Regarding the Appellants reference to the April 25th meeting not being noted in the planning report, the Planning Authority state that this was not a formal pre-planning s247meeting.
- Due to the nature and scale of the proposed development, taken together with the concentration of existing social support services in the area, the proposed development would result in a significant over concentration of such services in this area. This would negate against the preservation of the area as a sustainable neighbourhood, impact on the vitality and viability of the area and on the existing and potential tourism offer in the area. The Planning Authority remains of the view that the proposed development would therefore contravene the policies of the development plan and would be contrary to the proper planning and sustainable development of the area.

6.3. Observations

- 6.3.1. 54 no. observations have been submitted to the Board, including many with multiple signatories. They can be divided into those that object to the proposed development and those that support it. The list of Observers can be found on the cover page of this report. Many of the objections to the proposed development commend the work undertaken by the existing MQI and the intentions of providing a valuable service for vulnerable people. The issues raised in the observations can be summarised as follows:

Those Objecting to the proposed development

Received from residents, business owners, tourist operators, community activists, Principal, Board of Management, parents of and volunteers at the adjoining St Audoen's National School.

Location

- The proposed location is unsuitable. The area is already subject to much anti-social behaviour from clients of the existing service. This will be exacerbated, as the number using the proposed service will increase in numbers and frequency. The area is unsafe. The proposed centre should be located away from residences. People are moving out of the area due to fear, intimidation and safety. The HSE's tender documentation may have required a city centre location but it

did not set out to meet proper planning and sustainable development. Their focus was narrow, with no regard to considerations other than meeting the needs of the end-users. Any rational process would have avoided placing this facility so close to a school.

- The proposed facility is too close to the St Audoen's school. Given that there are laws to prevent fast-food beside a school, the proposed injecting facility should not be permitted beside a school.
- Open drug use and drug related activity occurs daily in this area. This and the resultant drug use litter has a significantly negative impact on business and tourist operations.
- Temple bar and the wider Dublin 8 area is an important tourist destination, one that must be protected. The wider area accommodates Dublin Castle, Christchurch / Dublinia, the Liberties, the Old City, Guinness Storehouse, Kilmainham Gaol. The impact of the proposed development on the tourist industry must be considered in terms of public safety, public order and the reputation of the city as a tourist destination.
- The area has too many services for drug users. Many travel to this area to receive support services. The Night Café causes significant anti-social behaviour and does not have the benefit of planning permission. Many businesses in the area have suffered. The proposed use would deter any further private investment in the area.
- The disproportionate concentration of services in a small geographic area will be compounded by the proposed facility. The appellant has acknowledged that there are 39 no. social services within 500m of the site. The area benefited from urban renewal and became a very successful community. This has dis-improved since the introduction of the needle exchange in 2008. There must be a balance between providing services to the needy whilst proving a liveable city centre and a safe public realm.
- The narrowness of the 500m radius chosen by the applicant renders the assessment of very limited value. The proposed SIF will intensify the concentration. This is detrimental to the material well being of the city.
- MSIF should only be located as mobile services such as in Toronto and New York, or in secure locations such as hospitals, police stations or specialist

dedicated facilities. The HSE did not assess any alternative locations. They should be located away from schools, public parks and important routes in and out of the city.

- The proposed development will create an area where illegal activities: drug distribution, buying & selling of drugs and violent anti-social behaviour will become un-prosecutable offences. Illegal activity will be normalised. The proposed development will create a notional area of no defined boundary wherein possession of illegal drugs cannot be policed.
- Regard must be had to the heavily trafficked R148 outside the facility.
- There is a well-established pattern of ever-increasing use of the existing facility. The area cannot accommodate an intensity of that use. The use of the needle exchange facility has risen from 18,951 in 2011 to 26,533 in 2018.
- The subject site was chosen without reference to planning considerations. It is submitted that there will be little appetite to develop further facilities in the city. Site selection must include consideration of schools, parks, residential neighbourhoods and businesses in the immediate area.
- The location of the proposed facility beside a school is impossible to defend.
- There is considerable international evidence that MSIF's create problems for local communities.

Policing

- Insufficient policing existing and proposed. The use of security on the premises will just move the problem outside the centre. This requires a policing response. The sale and use of drugs in the area results in much crime and violence. The area is not safe. Residents, staff of local businesses, tourists, schoolchildren and the community as a whole is suffering. MQI's approach to this is haphazard and makes the situation worse. The problem is not managing the interior, it is the outside that is problematic. The Appellants technical legal argument does not remove the need for the community to know how the facility and area will be policed.
- It is entirely reasonable for the Planning Authority to request evidence of a policing plan. MQI personnel are mostly volunteers who have very limited powers.
- Emergency services and / or An Garda Síochána are at the facility every day. It is not clear what long-term commitment can be offered by An Garda Síochána.

- The issue of criminality around SIF is a valid concern.
- One of the Observations (Temple Bar Company) is accompanied by a report assessing the policing issues for the proposed SIF. In summary, the report states that an SIF cannot be policed effectively as An Garda Síochána do not have clear legislation to deal with.
- The appellant has sought to diminish the genuine concerns of the public in relation to the impact of crime. The submission of the appellant is disingenuous. The MQI website states that they are currently working with An Garda Síochána to prepare a policing plan for the area.
- The 2017 Act provides a legal loophole that will be difficult to police.
- A robust community and policing strategy must be provided. That such a provision is outside the planning system undermines any reasonable basis for the operation of this facility.
- The appeal refers to the National Drug Strategy: Reducing Harm Supporting Recovery. This document refers to 'crime' 47 no. times. The Appellants submission that policing must form no part of the assessment is illogical

Development Plan

- The proposed development does not comply with the zoning objective for the area. An MSIF is not a building for the health, safety and welfare of the public. The proposed development does not comply with policy QH30 and section 16.12 of the development plan regarding the concentration of uses. As this is a new category of development, it should wait until the development plan is reviewed.
- The subject site is located in a Conservation Area with a large number of protected structures. The proposed alterations to the exterior of the subject building are welcome, but as part of a separate application.
- The efforts of the Liberties LAP to regenerate the area is to be commended. The decision of the Planning Authority to protect that is welcomed.

Impact

- The proposed development will increase the sale and use of drugs. The question of how illegal drugs will be taken into the centre has not been answered. It is submitted that an increase in drug-dealing outside the centre will arise. The existing services suck young people into selling drugs.

- The proposed development may save the lives of the clients but no regard has been had of the lives of the residents. The existing services at MQI should be closed down.
- St Audoen's national school with 40 no. staff has been in this area since 1756. There are 197 pupils ranging from 4 to 12 years of age. 11 no. children aged three attend the pre-school. The school operates from 8.15am to 5pm. The rear of the MQI premises backs on to the school, with an emergency exit. The proximity of the MQI facility to the school has an ongoing deleterious effect on the children and staff of the school, creating a toxic environment. The children are exposed to addiction, drug use, criminality and death. The applicant has failed to note that condition no. 2 of the permission granted by the Board which required management of the area has only been periodically provided. The school is concerned this indifference to planning conditions will continue with the proposed development. The public park beside the school is frequently used by users of the service for anti-social and criminal activities. This will worsen if the appeal is granted. The appellants reference to a community engagement teams is rejected as untrue. The school keeps a log-book of incidents that have occurred since 2015. The welfare of the children is at risk. Insufficient detail has been presented regarding the level of drug-dealing that will occur prior to the booths being opened at each session, where the users will go after they have used the facility and how the area will be policed. It is submitted that the proposed development will not solve the existing problems, merely adding another service. The applicant has admitted that they are powerless to avoid 'loitering' in the area. The lack of a policing response is unacceptable. A Child Impact Assessment is required. The proposed development is a child protection concern.
- The facility could become 24hours, leading to a situation where clients of MQI are in the area all day.

Application

- There was no meaningful engagement with the public. The impacts on the wider community have not been adequately assessed. It is a basic principle of good public service to consult the public.

- It appears that the prior existence of the MQI may have been the principal impetus behind the selection. Only the MQI tender was validated by the HSE. It is submitted that a proper site evaluation was not undertaken and that the current scale of services at MQI was not assessed.
- Community engagement requires the support of the community. This will not be forthcoming. International evidence shows that local communities do not want SIF in their areas.
- The assertion by MQI that the proposed development will reduce crime, anti-social behaviour and dealing is not credible. The existing facility caters for up to 200 clients a day. This results in up to 200 drug deals a day. The proposed development, which has not been tested, will result in a greater number of drug deals before clients enter the facility. Multiple attendances every day by each client has not been considered.
- The applicant has not provided any scientific data about the quantities and location of drug litter, public drug use, existing crime and anti-social behaviour. It is not possible to accurately assess the impact of the proposed development. It is submitted that MQI will not be capable of controlling throughput of its services, leading to an overspill into the immediate area.
- Those consulted by MQI for the proposed development appear to be clients only. The public, the residents, staff, visitors, the school, etc were not consulted. An evaluation of bringing drug use into a facility used by the homeless should have assessed whether this places other users at risk. MQI have provided no statistical evidence that the Dublin 8 area has a significant number of residential drug addicts. The National Advisory Committee on Drugs and Alcohol in Ireland (2014) found that Ballymun has the highest concentration.
- There is no evidence that SIC's work. International evidence regarding failures of the service and the evidence that they create negatives has not been presented. The focus on harm reduction results in normalising drug use. Insufficient debate occurred before the legislation was introduced. The EMCDDA, as experts in the area, have not provided conclusive evidence that such centres work. It is submitted that the real agenda is crime reduction, rather than the health and welfare of the clients. The proposed MSIF is contrary to the National Drugs Strategy. The reliability of the studies presented by the applicant has been

criticised. In Germany, there is strong evidence that drug related behaviour is an issue around SIF's. In Strasbourg and Paris, the SIF is located on hospital grounds. A resident's association has been established in Paris to close down the SIF. The Copenhagen SIF is located in a commercial area. The Ottawa and Toronto police forces have strongly criticised their SIF. It is submitted that this has not been considered by the HSE.

- The grounds of appeal are incorrect and / or misleading. The majority of homeless families are economic homeless. The applicant has ignored evidence that SIC do not work, that their safety cannot be verified and that the addition of another service will add chaos to an already unacceptable situation.
- There has been no inter-agency approach to the proposed development. No risk assessment has been undertaken.
- Section 41 of the Planning and Development Act 2000, as amended does not allow for an 18-month planning permission.
- The Misuse of Drugs (Supervised Injecting Facilities) 2017 is a profound departure in Irish law. It had very little public debate. The impact of an SIF has not been tested, in Ireland, in planning law or in development plans.
- The appellant has not addressed the Planning Authority's reasons for refusal. Homeless figures are presented as if an SIF would solve the problem. If homelessness is a site selection criteria, then Dublin 1 has twice the number of homeless as Dublin 8.
- The notion of a temporary evaluation period points to the fundamental problems with the application.
- It is submitted that the Planning Authority has many years' experience of the negative impacts of MQI and is not happy to allow the applicant to proceed with the development.
- The Board is requested to refuse permission for the proposed development.

Those in favour of the proposed development

Two submissions in favour of the proposed development, can be summarised as follows:

- Vulnerable people are forced to inject in public. The failure to provide services is not beneficial to these people, the area or the local / tourist economy.

- The proposed development complies with development plan policy to reduce substance misuse.
- The proposed development is in line with international best practice.
- An MSIF is vital for the area. The proposed development would improve the existing problems, for residential and commercial amenity.
- This pilot system needs to be established across the city and country. The Planning Authority's reason for refusal would make that impossible. The proposed pilot scheme is necessary to get a wider national scheme established.
- The Planning Authority's reason for refusal ignores the current reality in the area – high levels of anti-social behaviour, crime and public injecting, drug overdosing and public drug litter. Their decision assumes an increase in anti-social behaviour but this is not based on evidence.
- The Council's assessment of the proposed development as a national facility is incorrect, not credible and not based on evidence.
- The decision of the Planning Authority is contrary to the development plan.
- Should the proposed pilot scheme fail, the option to remove the license.
- The proposed development will link social, medical and housing supports to those in addiction. Colocation is necessary as it is where the demand is. If there is a concentration of people with drug addiction it stands to reason that services for drug addiction should be in the same area.
- Protection of residential amenity should not exclude those residents who use the service.

6.4. Prescribed Bodies

- 6.4.1. **HSE:** The HSE support the third-party appeal. The facility was proposed on foot of the Misuse of Drugs (Supervised Injecting Facility) Act 2017. A pilot was proposed for Dublin City Centre. A working group, comprising the HSE, DoH, DCC, An Garda Síochána and Uisce, was established. A consultation with the target cohort was undertaken. A mapping exercise examined drug related deaths, callouts for suspected overdoses, drug related litter, needle exchange data and anti-social behaviour. This information clearly demonstrates that the city centre is the most appropriate location for an SIF. Visits to facilities in France, Denmark and Spain provided detail on key areas for monitoring and evaluation needed at 6 and

18months into operation. A bespoke tendering process involving the HSE Social Inclusion, HSE Public Health, DCC, An Garda Síochána and an international expert identified MQI Riverbank as the most appropriate location for the MSIF. An MSIF will meet the needs of the marginalised clients but also the local area as it will reduce street injecting and drug related litter. Of the 234 no. deaths among people who inject drugs, half were in Dublin city.

An MSIF provides space for the clinical controlled injection of drugs, access to clean, sterile equipment, emergency care, medical and social care interventions, counselling interventions, referral pathways to other services and access to naloxone when leaving the facility. Considerable research has shown positive impacts from SIF, including reduced needle sharing, a decrease in public injecting and a reduction in drug litter. There is no evidence to show that SIF increases drug use, frequency of injecting or local drug-related crime. Research demonstrates that MSIF do not attract users from other localities. MSIF provide the following definitive outcomes: reduce risks associated with drug injecting, reduce morbidity and mortality, stabilise and promote patient's health and reduce public nuisance. The proposed development is an innovative health initiative that will save lives in the most marginalised cohorts of society.

- 6.4.2. **Department of Health:** Supports the third-party appeal. The establishment of an MSIF is a commitment in the 'Programme for a Partnership Government' and is a key action in the national drugs strategy 'Reducing Harm, Supporting Recovery'. An MSIF is a public health response to the reality is drug use, trying to minimise the harm such use brings to individuals, their families and communities. Of the 234 no. deaths among people who inject drugs, half were in Dublin city. The MSIF will contribute significantly to a reduction in drug-related deaths and overdoses. According to the EU Drugs Agency, SIF are an integrated component of low threshold drug treatment services. There are over 90 no. MSIF worldwide. The European Forum for Urban Security is leading an EU-funded project (Solidify) on the implementation and sustainability of SIF in Europe. An MSIF will allow injecting drug users to access a range of medical and social services: referral to addiction services, recovery-oriented services, sterile equipment, health services, psychological services, access to naloxone, advice on housing and welfare rights and an opportunity to engage with health and social care staff. The proposed development

will reduce the negative impact of public injecting and drug-related litter. The 18-month trial period will allow the impact of the facility to be assessed. The 2017 Misuse of Drugs (supervised Injecting Facilities) Act received cross party support. It enables the Minister to issue a licence but it does not establish the location. The Act exempts possession of drugs within the facility but not outside. Possession for sale or supply will continue to be an offence. Section 3 of the Act requires the Minister to be satisfied that the premises are suitable, that the applicant can comply with any conditions, that the applicant has the relevant experience and expertise and is a fit and proper person. The Minister must be satisfied that there are appropriate protocols are in place, the premises are fit for purpose and that the nature or level of drug use or available information indicates a need. The legislative oversight for the operation and clinical governance of the facility lies with the Minister of State in the Department of Health. MQI will be held accountable under their licence. Matters concerning the operation of the facility are matters for consideration under the 2017 Act and not the planning process.

It is clear that there is a health and safety problem with street injecting in Dublin city centre. It is estimated that 400 no. drug users inject in public, many of whom have critical healthcare and housing needs. Interviews undertaken by the key stakeholders found that those surveyed would use an MSIF and would access a health intervention. The Dublin Region Homeless Executive confirm that Dublin 1, 7 and 8 have 3,000 emergency accommodation beds, including the 434 no. adults in Dublin 8. The proposed development is therefore appropriate for street drug injecting amongst homeless and other vulnerable groups. An MSIF is not an additional social support service, no temporary accommodation will be provided. It is a key component of a long-term strategy to reduce homelessness in Dublin 8 and surrounding areas. It will help stabilise people who use the facility and will benefit the local community, reducing public injecting. The Minister supports the relocation of the Night Café.

The Minister has asked the project promoters to ensure there is positive engagement with the local residents, St Audoen's school, and community groups. A Monitoring committee will be established to oversee the operation and governance of the MSIF, chaired by the HSE and comprising stakeholders from the local community and

statutory / voluntary services. Plans and resources are in place for community engagement to build public acceptance of the proposed facility.

6.4.3. **Fáilte Ireland:** Tourism is important to Dublin, as a revenue generator and economic driver. There are a large number of tourist attractions and amenities within the Merchants Quay area. These attract a large number of visitors and spend. Significant investment in the area has taken place, which have secured the future of the area. Fáilte Ireland have identified the Liberties as having great potential. The proposed MSIF is located within the Liberties LAP. A key objective of the LAP is to promote a safe and attractive urban environment. A concern has been raised that the proposed development could affect these tourism objectives. The Tourism industry in the subject area have concerns that crime and anti-social behaviour may have a negative impact on their businesses. It is noted that the DCC reason for refusal stated that the proposed development would undermine the existing local economy and the growing tourism economy. Fáilte Ireland recognises the need for an MSIF and they do not object in principle, however, the concerns of local tourism businesses must be considered.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the planning authority, the prescribed bodies and the Observers. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Planning Policy
- Location - Concentration of Similar Uses in Dublin 8
- Location – Proximity to Sensitive Uses
- Policing Plan

7.2. Principle of Development

- 7.2.1. The provision of an MSIF is Government policy, as provided for in the Misuse of Drugs (Supervised Injecting Facilities) 2017 Act. The Act seeks to provide for the establishment, licensing, operation and regulations of supervised injecting facilities for the purposes of reducing harm to people who inject drugs; to enhance the dignity, health and well-being of 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; and to provide for matters related thereto.
- 7.2.2. Section 2(1) of the act provides that a person may apply to the Minister for a licence to operate a supervised injecting facility in respect of certain premises. This section of the act outlines the requirements the application must comply with before a licence can be granted under section 3 of the Act. Section 3 states that the Minister of Health must be satisfied that both the premises and the applicant are suitable and fit to provide for the operation of an SIF, and that the applicant has both the expertise and the experience relevant to the operation of an SIF. Section 3 states that a licence cannot be awarded until the Minister has consulted certain bodies (including the HSE and the An Garda Síochána) that the premises are appropriate and fit for purpose, that the protocols and clinical governance are in place and that the level and nature of drug use indicated is such that a facility is needed.
- 7.2.3. Some of the observers have called into question the efficacy of SIF, the need for SIF and whether they are the most appropriate tool for reducing harm (national policy as per Reducing Harm, Supporting Recovery – a health led response to drug and alcohol use in Ireland 2017-2025). The subject appeal is not the mechanism for such debate, however. The provision of an MSIF is Government Policy and as such, shall not be further assessed in this appeal. It is the submission of the Government departments and the applicants themselves in this appeal, that international evidence points to SIF being an appropriate response to the reality of drug-use.
- 7.2.4. The question therefore, becomes one of whether the subject site is an appropriate location for the first proposed MSIF.
- 7.2.5. The 2017 Act does not refer to a specific location for the establishment of MSIF. Section 1.2.1 of the HSE tender document notes that the Act does not establish a

location for an SIF, that it was the object that the specific procurement process to “procure a suitably qualified service provider to operate such a facility in Dublin City Centre on a pilot basis.” The tender document notes that following the establishment of a working group, the evidence and information gathered pointed to “inner city Dublin as an appropriate location for an SIF”. Section 1.3.2 of the tender document states that the SIF must be “within the area designated as Dublin Inner City by the Dublin City Development Plan 2016-2022”. It is the submission of the applicant that research has shown that for a MSIF to be effective, it must be located within the city’s main area for drug related behaviour. This is discussed in greater detail in section 7.4 below.

7.2.6. The proposed re-development of the elevations of the subject building is welcomed.

7.2.7. Regarding the appellants submission that the Planning Authority has ignored development plan policies (section 2.2.4.1, 12.2.2 Objective SN15, Objective SN22 of the development plan or Objective 2 of the Liberties LAP) that seek to improve community facilities for substance misuse, I find nothing in the Planning Authority assessment that challenged the principle of an MSIF. The Planning Authority’s report concentrated on the impact of the proposed MSIF in terms of location and context only and did not query the principle.

7.3. **Planning Policy**

7.3.1. It has been submitted by a number of the Observers objecting to the proposed development that the proposed development is contrary to the development plan zoning objective for the area. They state that an SIF is not a category of development in the development plan or in planning legislation and it is not a use that is permitted in the area. As noted in section 5.1.1 above, the subject site is zoned Z5. The applicant has submitted that the proposed development can be considered a “building for the health, safety and welfare of the public” or a “community use” and that these uses are open for consideration in Z5 zones. Such uses are actually permissible uses in Z5 zones. I see no reason why the subject facility and the proposed use as an MSIF can not be considered a building for the health, safety and welfare of the public, given the nature of the services it currently provides and seeks permission to provide. I note that the decision of the Board under

PL29S.228820 approved the Homeless and Drug Services provision at the subject site in 2008.

7.3.2. I am satisfied that the proposed development complies with the zoning objective of the area.

7.4. Location – Over concentration of Similar Uses

7.4.1. Two issues relating to the location of the proposed MSIF have been raised: the proximity to other sensitive uses (school, residences, businesses and tourist operations) and the concentration of uses in the Dublin 8 area. These are discussed separately.

7.4.2. Policy QH30 and section 16.12 of the development plan recognise that there is a tipping point, past which the provision of a particular type of social service begins to negatively impact the sustainability of a neighbourhood. This point was raised by a large number of the observers – they consider their community disproportionately provides social services, particularly those for homeless and drug services.

7.4.3. The applicant was asked at FI stage to provide a map of all homeless and social support services within 500m of the MQI site. In response, they submitted three maps. Map no. 1 shows the location of 39 no. social services, Map no. 2 shows the location of 17 no. homeless services and map no. 3 shows the location of the 4 no. addiction services within 500m of MQI. The Applicant submitted that only map no. 3 was germane to the policy, as only these four locations provided services similar to the proposed MSIF. They also submitted that there cannot be an over-concentration of injecting facilities as the proposed facility would be the first. In their appeal to the Board, the applicant asked the Board not to consider the proposed use an additional use, but part of the existing uses.

7.4.4. In assessing the FI submission, the Planning Authority stated that they considered the proposed MSIF to be a national facility and they queried the ability of the area to accommodate such a scale. The planning officers report stated that the area already accommodated a disproportionate quantum of institutional hostel accommodation, homeless accommodation and social support institutions and that further development would undermine the sustainability of the neighbourhood.

- 7.4.5. Policy QH30 specifically refers to homeless services, as does the accompanying section 5.5.11. The proposed development, while it may serve a large number of homeless persons, is not a homeless accommodation or a support service specifically for the homeless. The applicant has presented information that demonstrates that a large number of homeless people use the MQI services but that does not automatically correlate to the proposed SIF being *only* for the homeless. The proposed service will be accessible for all, regardless of their housing needs. I am not satisfied therefore that the requirements under policy QH30 apply to the subject proposal. Consequently, I do not consider the proposed development to be contrary to the proposal.
- 7.4.6. Notwithstanding the above, the reality of over-concentration must be addressed. That the policy does not specifically refer to support services other than those aimed at the homeless, is not a reason to ignore the impact of the proposed development and the ‘tipping point’ assessment intended by policy QH30. On that note, I draw the Boards attention to section 16.12 of the development plan, which refers to social support institutions generally and which is arguably more relevant to the subject proposal.
- 7.4.7. Whilst the appellant argues that the nature of the proposed MSIF is such that only map 3 (4 no. locations within 500m of MQI) is relevant, I concur with the Planning Authority – all social support institutions must be considered when assessing the impact. Further, I note that in their Operations Plan, the applicant acknowledges that the area of the subject site “hosts a number of other services catering for those experiencing homeless and / or addiction including day services, health promotion, primary and mental healthcare, emergency shelter and access to residential detoxification and rehabilitation services” (page 12 MSIF Operations Plan).
- 7.4.8. As noted by all parties to this appeal, the crossover of clients between all the various social supports is significant. To reduce the assessment of the impact to only those clients of needle exchange / injecting facilities would ignore the reality that many of the clients of MQI are also clients of homeless, health and other support services in the immediate area. The applicant has stated that 76% of people who inject drugs surveyed by Uisce (Union of Improved Services, Communication and Education) identify as homeless.

- 7.4.9. This leads one to the issue of whether the proposed use is merely an addition to the existing MQI facilities, and thus will have no greater impact (as proffered by the appellant) or whether it will create a 'draw' to the area for people who would not currently frequent the area (as submitted by the objectors). The Objectors to the proposed development consider the SIF to be an *additional* facility, one which will intensify and exacerbate the existing problems the area faces.
- 7.4.10. The applicant was asked to address this question at FI stage. They were requested to provide details of the number of clients, frequency and duration of stay, regulation of client visits and justification for hours of operation (as they appeared to exceed the HSE recommended hours). The applicant responded with an Operations Plan June 2019, noting that they had submitted such a plan with the application in October 2018.
- 7.4.11. The plan states that between 60-100 clients are expected to use the MSIF daily, with the busiest times being before 9am and after 8pm. Operating seven booths, with a 20-minute maximum stay will allow 21 no. medically supervised injections to take place per hour. The question of who the users will be is not clearly answered. Many of the Observers submit that those using the facility will be new clients – therefore intensifying the existing scale of use. MQI appear to suggest that many of their existing clients will use the MSIF, therefore there will not be additional clients.
- 7.4.12. The operations plan submitted with the application provides details of the use of the facility by clients, staff and other personnel. It is clear that a comprehensive analysis of the operation of the facility within the Riverbank building has been undertaken. The Community Engagement and Liaison Plan (October 2018) deals with the activities that occur outside of the building. This is addressed further in section 7.5 below.
- 7.4.13. An element of the application of MQI to operate the proposed MSIF, is that they currently provide a range of services to those who will likely avail of the MSIF services. They note that early intervention is key to reducing harm. One can see the logic of providing a service required by some of the people who already avail of the services in MQI – a one-stop shop of sorts. Following that reasoning, the Riverbank facility is an appropriate location for the proposed SIF.

7.4.14. I do not agree with the reasoning of the Planning Authority that the proposed facility must be considered to be a national facility, one that will encourage users from a large catchment area. The scale of the proposed development is such that it can only accommodate a defined number of clients at each session. This will naturally curtail the extent of use. The concerns of the Objectors that the proposed facility will encourage clients from outside the immediate catchment is understood, as is the impact this would have on the immediate area in terms of queuing, loitering, drug activity etc. It is considered however, based on the information submitted by the Applicant that the users of the proposed facility will largely comprise the existing clients of MQI. The proposed use, it is considered, will not create a new use, but add another service to those currently availing of the open access services in MQI. This is addressed in further detail in section 7.7 below.

7.5. Location – Proximity to Sensitive Uses

- 7.5.1. Those objecting to the location of an MSIF in the existing MQI facility have provided compelling evidence of the negative impact of drug use and all the associated behaviours on the area. Residents, pupils, parents, teacher and volunteers in the school, local businesses, tourist operators list the daily negative interactions they have with clients of MQI. The experiences outlined by the adjoining St Audoen's national school make for stark reading. The impact of the detailed incidences on the staff, pupils and parents cannot be underestimated or ignored. The over-riding concern of the observers is that this ongoing anti-social and criminal behaviour will be exacerbated by the proposed development, as it will both legitimise drug use and encourage a greater number of clients to the immediate area. It has been submitted by many of the Observers, that anti-social, dangerous behaviour has increased since the introduction of the needle exchange.
- 7.5.2. The response of the Appellant and the two Government departments supporting their appeal, is that, contrary to these concerns, the proposed development will 'clean-up' the area, providing a medically supervised place for the activities that currently happen in public and in close proximity to the school. The appellant has provided studies that demonstrate that internationally, the introduction of an MSIF has had a positive effect on the wider area. The Planning Authority did not accept this reasoning, stating that the applicant had not sufficiently demonstrated that cause and

effect. Many of the Observers also reject this submission, stating that as many negative studies can be found as positive ones.

- 7.5.3. One question to be asked is how much of the existing anti-social behaviour is linked to the existing facility in MQI. Should permission for the proposed development be refused, this situation is unlikely to change. The residents, business and children of the school would continue to experience serious negative incidents. The proposed development, according to the applicants would reduce the public nature of the behaviours associated with drug use. However, the fear of the observers is that it would increase the number of users to the wider area and therefore exacerbate their current negative experiences. They submit that as 'safe' and un-policed spaces will be available in the MSIF, those requiring such a service will be encouraged into the area. They also submit that the provision of a facility that allows the injection of an authorised substance, will necessitate the purchase of the substances outside the facility – i.e. in the Objectors neighbourhood. The Objectors note that while the personal use of authorised substances will be legal within the facility, it will remain illegal outside of the building. They state that this will cause an increased amount of drug-sales in the immediate area of the MSIF. On this matter, I note section 1.2.1 of the HSE Invitation to Tender document which states “evidence does not support concerns that injecting facilities encourage drug use, delay treatment entry or aggravate problems associated with local drug markets.” Neither the tender document nor the quoted FAQ section on the website referred to in the tender document provide a reference for this claim, however, simply stating that “international evidence shows....”.
- 7.5.4. I note the submission of St Audoen’s national school. Their observation refers to a Consultant Psychologist, hired by the school, who comments that having a facility that normalises illegal activity (needle exchange, consumption of drugs for personal use) has an influence on a child’s understanding of what is acceptable behaviour. This was repeated by a number of the Observers.
- 7.5.5. It must be stated; the needle exchange and the homeless and drug services provided by MQI are existing. The proposed development, if refused, would not remove the existing level of exposure the children face. The existing anti-social behaviour would not decrease or be removed from the area.

- 7.5.6. It is the submission of the applicant that the level of exposure the children currently face would be significantly improved by the proposed development. The busiest hours of operation (before 9am) occur when children will be heading to school – therefore taking the once public drug-taking off the street where the children witness it and other associated behaviours, indoors where it will be medically supervised.
- 7.5.7. With regard to the existing MQI efforts to monitor and reduce the impact of drug-use behaviours on the public, it has been submitted by some observers that these endeavours are sporadic, ineffective and unreliable. The applicant’s offer to continue such efforts has provided little comfort to the school management in particular. On this matter I note section 1.3.8 of the HSE Invitation to Tender document, from which MQI were awarded the licence for the MSIF. This section refers to Community Liaison and states that a key element in the success of the pilot will be a demonstration of consultation and ongoing engagement with local stakeholders from the surrounding area once the location has been identified. The tender states that the successful operator will be required to have in place a specific plan for this and to employ a community liaison officer to engage local business, communities and residents in a meaningful manner. Key to the subject appeal is the recommendation that “Local opinion before and after the opening of the facility should be recorded and reported on”.
- 7.5.8. A Community Engagement and Liaison Plan (October 2018) was submitted with the application. The comprehensive document details a long list of actions they currently undertake (page 6 refers to a decade long community engagement team) and those they propose to undertake if the MSIF is granted permission. The plan is impressive. However, as noted above, its veracity has been called into question by a number of third-party Observers. The detailed list of grievances submitted by the Observers would lead one to believe that the current plan is not successful or is ineffective. A large number of the wider community are dissatisfied with the current operation of MQI and the impact it has daily on their lives, their businesses, their schools and their children. They demonstrate no confidence that this track record will change once another service is added to MQI.
- 7.5.9. As with all of the issues assessed in this appeal, the outstanding question is the risk-benefit analysis of an attempt to clean up the negative impacts of the existing service

versus the possibility that a larger number of users and new services will negate the benefits of supervising such behaviours indoors.

- 7.5.10. In response to the submission of some Observers, that the proposed SIF should be located in a hospital, secure facility or a mobile unit, I note the submission of the Applicant (Operations Plan) that the “vast majority of MSIF’s are integrated in low-threshold facilities”. The applicant submits that this allows drug consumption to be one of a number of survival-oriented services such as the provision of food, showers and clothing, prevention materials, counselling, healthcare and referral to drug treatment. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), it is imperative for the success of an injecting facility that it is located in the city’s main area for drug related behaviour. The Operations plan references a 2017 survey that found that 74% of MSIF are in the centre of towns, near a major travel hub (54%), within the boundaries of established street-based drug scene (48%), 57% are co-located with other social support services and 30% are stand-alone programmes. Further to this, is the licence requirement that the successful operator must have a demonstrable track record for the operation of such a facility and that their premises must be fit for purpose.
- 7.5.11. The purpose of the planning process is not to stray into the remit of the licensing process which found the MQI facility and operator to be acceptable, but to assess the impact of the proposed development on the receiving environment. This is addressed in further detail in section 7.7 below.

7.6. Policing Plan

- 7.6.1. The first-party appeal submission included as Appendix B a letter from a Senior Counsel Eamon Galligan to the applicants planning agent (dated 21st August 2019). The letter refers to two issues: whether a Planning Authority is entitled to refuse permission on the grounds of the absence of a policing plan and secondly the scope of matters under the licensing process of the 2017 Act rather than in the context of the planning process.
- 7.6.2. The letter refers to the policing plan which was requested by DCC as a matter of FI. The author infers that in requesting such an item, it was the intent of DCC to consider the effectiveness of the plan prior to determining the planning application. The author notes that DCC were advised that the involvement of An Garda Síochána

in the planning process was not appropriate. He further notes that the preparation of such a plan were permission refused, would be a waste of Garda resources and State monies and finally that making a detailed policing plan public knowledge is highly undesirable from a security point of view.

7.6.3. Mr Galligan's letter then moves on to the scope of the Planning and Development Act 2000, as amended. He states that while public safety is a relevant planning consideration, this does not extend as far as a detailed policing plan. Mr Galligan submits that the requirement for a policing plan is ultra vires for three reasons:

- 1 It is not within the applicant's power to deliver
- 2 It is a matter which is entrusted to a separate and independent statutory authority
- 3 It is not relevant to planning as Planning Authorities have no expertise or competence in adjudicating on the adequacy of policing plans

7.6.4. Mr Galligan's advice to the applicant notes that the planning code does not require the submission of detailed plans for certain developments associated with An Garda Síochána which are excluded from the 2000 act due to their sensitive and confidential nature.

7.6.5. The advice letter then refers to the scope of the Misuse of Drugs (Supervised Injecting Facilities) 2017 Act. Section 3(1) of the act lists certain matters which the Minister must be satisfied with before a licence is granted. Section 3(2) gives the Minister power to consult with An Garda Síochána, under which, the author suggests that a detailed policing plan would clearly be a relevant consideration. It is submitted that the terms and conditions of a licence awarded under the 2017 act, are intended to regulate most of the operational matters relating to medical supervision and clinical governance. Ergo, it is submitted, these matters are not within the scope of planning control.

7.6.6. I note section 1.3.8 of the HSE Invitation to Tender document, from which MQI were awarded the licence for the MSIF. In detailing the requirements for the successful operator, it notes that engagement with local Garda is 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 must include an agreement around dealing with anti-social behaviour in and around the SIF.

- 7.6.7. The Board are not privy to the details of the MQI application made under the tender, only that they were successful in seeking the licence. Nor should they be. The tender documents are confidential according to section 1.3.12 of the tender invitation and cannot be released to a third-party without the consent of the HSE. However, noting the requirement outlined above and given that the applicant won the tender, they must have satisfied the HSE that such a model is in place. It is regrettable therefore that the applicant did not see fit to provide such a reassurance to the Planning Authority and / or the Board. While the argument of the applicant regarding the technical and legal complexities of a policing plan is accepted, the concern of the Objectors and the Planning Authority could have been alleviated had the applicant demonstrated that such a model was in place. It appears that the applicant chose to focus on the legislative 'right' of asking for such a plan, rather than addressing the substantive concerns behind the reason for asking. Again, given that the applicant must have satisfactorily demonstrated to the HSE that they have such a plan in place, it is regrettable that they did not demonstrate same to the Planning Authority and to the Board. Sensitive or confidential details are not required, only a statement that such a plan was in place.
- 7.6.8. I am not entirely convinced by the appellants interpretation of the FI request, namely that the Planning Authority intended to adjudicate on the effectiveness of the Plan. It may have been sufficient to simply indicate that such a plan was in place, that it had formed part of the winning tender and that as key stakeholders An Garda Síochána are an integral part of the delivery of the proposed development. Such a statement would certainly have satisfied this Inspector in assessing this appeal.
- 7.6.9. As noted by the tender document, "a key element of the success of the pilot will be a demonstration of consultation and ongoing engagement with local stakeholders". And as noted by so many of the Objectors to the proposal, the acceptance of the proposed development by the wider community is lacking. Indeed, they indicate that there is very little support for the existing facility. Many of the observations criticised the current efforts of MQI to reduce the impact on the wider community and voiced their concern about adding yet another service, one which they argue will involve greater negative impacts.
- 7.6.10. That the clinical governance and operation of the MSIF is outside of the planning code is indisputable. However, the impact of the MSIF on the public realm is very

much a justifiable planning concern. In deciding whether the proposed development is acceptable in the proposed location, the Board must ask if it suffices that a Policing model was satisfactorily demonstrated to the HSE, or should the applicant also demonstrate same to a Planning Authority.

7.7. Summary

- 7.7.1. I note the very high level of dissatisfaction with the existing operation of MQI expressed by so many of the immediate community in the area. The predominant complaint expressed by the Observers is that public drug use, anti-social and criminal behaviour occurs daily around the existing facility. It is submitted by many that existing MQI efforts to control such behaviours are simply not effective, that MQI have a poor track record and therefore there is little confidence in their ability to control an intensified service. The Board must ask: if the awarding of a licence, the terms and conditions of which including monitoring, evaluation and community, is sufficient to change the track record evidenced to date. It is a difficult question to answer. The benefits to marginalised drug users from a MSIF, as submitted by the Applicant are worthy and that such a service is needed in Dublin City Centre is indisputable. The risks however, to the receiving environment, of such a project failing, are significant and severe. It is a big ask of a community who already appear to suffer greatly, to absorb another potential 'bad neighbour' use. There is the possibility that the proposed development however, might improve the area in terms of public injecting and drug related litter.
- 7.7.2. It is considered that the Board has a number of options. It could request further information, for example regarding the information submitted to the HSE regarding the future involvement of An Garda Síochána. I do not recommend this option however, given that the Applicant has had two opportunities to provide such information and has not. It is noted that An Garda Síochána appear to be integrally involved with the existing facility and the proposed facility, however.
- 7.7.3. A second option is to refuse permission, on the grounds that the proposed development has not adequately demonstrated that it will not negatively impact the receiving environment. Whilst this would protect the community from the possibility of the proposed development failing, it would also not afford the opportunity the possibility that the proposed development would improve the existing situation.

- 7.7.4. The third option is to grant a restricted life permission. The development management guidelines generally discourage the granting of permissions on a temporary basis. Section 7.5 of the guidelines state that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. The reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development, they can only be safeguarded by ensuring that it does not take place. The subject development is different however. It is clear that those proposing the subject development consider it will have a clear and marked improvement on the existing area, removing the anti-social behaviour associated with public drug taking, thereby improving the overall public realm. Opponents of the scheme consider that the effects of the existing MQI are so significant and severe and that any possibility of them being exacerbated must be resisted. In this instance and taking into consideration the submissions of all parties, it is considered that the opportunity should be given for the existing situation to improve. The development management guidelines refer to a use which may possibly be a 'bad neighbour' to existing uses, and state that it may be appropriate to grant a temporary permission to enable the impact of the development to be assessed. The proposed facility has been awarded a pilot 18-month licence from the HSE. An ongoing system of monitoring and evaluation has been proposed. As noted by one of the Observers, section 41 of the Planning and Development Act 2000, as amended does not allow for a limited planning permission of less than two years.
- 7.7.5. Considering the compelling submissions on both sides of this proposed development and acknowledging the limitations of the planning system with regard to the clinical governance and operation of the proposed development, it is considered that both the vulnerable clients of MQI and the already negatively impacted community of Dublin 8 deserve the opportunity to try to improve the situation. The granting of a temporary permission with monitoring and evaluation conditions will allow the impacts of the proposed development to be regularly assessed. Should it be found that the stated aim of an improvement in the public realm has not been achieved, the mechanism exists under both the licence and the permission for the operation to cease.

7.7.6. It is considered reasonable therefore to grant permission for a temporary period of 24no. months from the date of first operation (as opposed to the more usual date of Board order).

7.8. Appropriate Assessment

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

8.0 Recommendation

8.1.1. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1.1. Having regard to the zoning objective for the area, the pattern of existing and permitted development in the area, the site's inner city location, the range of services already on offer at the subject facility, the monitoring and evaluation proposed and the pilot scheme nature of the proposed development, it is considered that subject to the conditions set out below, the proposed development would not seriously injure the amenities of property in the vicinity, would not adversely impact on the residential amenity or character of the area and would be acceptable in terms of public safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 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 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.

- 3 The use of the premises as a Medically Safe Injecting Facility shall cease on or before two years 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 in the interest of residential amenity and public safety.

- 3 Prior to the commencement of development, the applicant shall submit for the written approval of the Planning Authority, confirmation that the existing Night Café operated in Riverbank, by Merchants Quay Ireland shall be relocated.

Reason: To reduce the scale and extent of services provided 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 proposed basement level of the development shall be restricted to a Medically Safe Injecting Facility (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of clarity

- 5 The development shall be managed and operated in accordance with the measures outlined in the Public Realm and Engagement Plan (October 2018 and June 2019) and the Operations Plan (October 2018 and June 2019).

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

- 6 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.

- 7 Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

- 8 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.

- 9 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

Gillian Kane
Senior Planning Inspector

18 November 2019