

'Fatal legal flaw' possible in children's hospital plan

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THE DEPARTMENT of Health failed to comply with an EU requirement for a strategic environmental assessment of the proposed national children's hospital in Dublin, An Bord Pleanála has been told.

In a submission to the board's oral hearing on the hospital, the Heritage Council said the department's failure to carry out the assessment could be a "fatal legal flaw" in the planning process.

The council, a statutory body, said much of the conflict over the hospital's proposed height and bulk resulted from this failure by the department to assess the environmental implications before deciding in May 2006 to go ahead with the €650 million project.

An Bord Pleanála is holding oral hearings into the plan to build the 16-storey hospital on a two-hectare site on the grounds of the Mater hospital. It is due to be completed in 2016.

The National Children's Hospital Development Board says an environmental report on Dublin City Council's 2008 Mountjoy/ Phibsboro local area plan, which covered the Mater site, was adequate to fulfil an EU directive's requirement for a strategic environmental assessment.

However Colm Murray, the Heritage Council's architecture officer, said the directive, which was transposed into Irish law in 2004, related to "all decisions in respect of plans and programmes that may have an environmental effect", such as the proposed hospital.

It also required an examination of alternatives. "Without real alternatives, there is no scope for choice or judgment and the environmental impact process is pointless and flawed", he said in a submission to the oral hearing. This could be "a fatal legal flaw in the decision-making process".

The fact that an environmental report was done on the Mountjoy/ Phibsboro local area plan, published in March 2008, was insufficient, as "the prior decision of government [to locate the hospital on the Mater site] prevented the generation of alternatives".

An Bord Pleanála's minutes of pre-planning consultations with the applicants record them as saying the decision to locate the hospital on the Mater site "was based on medical policy more so than planning policy and [they] acknowledged that it could be a contentious matter".

Mr Murray said the Heritage Council "is of the view that the integrity and authenticity of Dublin as a candidate [Unesco] World Heritage Site ought to be a major material consideration in this planning decision", because the 16-storey hospital would have negative impacts.

He noted that conservation architect Paul Arnold had conceded that “the adverse impact on St George’s Church [in nearby Hardwicke Place] will be high” and there would also be “identifiable adverse impacts” on North Great George’s Street and O’Connell Street.

An Taisce, in its submission to An Bord Pleanála’s oral hearing, drew attention to two alternatives that were not considered – a €102 million expansion plan for Our Lady’s Children’s Hospital in Crumlin and a publicly owned site between St James’s Hospital and Heuston Station. The latter site, it said, “offers more than double the footprint compared to the existing proposal” and was also “substantially co-located with a major adult teaching hospital, requiring only a 90m link to St James’s” as well as adequate space for expansion.

Lawyer James Nix, who appeared for An Taisce, also argued there was a failure to observe the EU’s strategic environmental assessment directive (SEA) and this “continues to the present day”, with the decision to opt for the Mater site “taken as a fait accompli” in the Mountjoy/Phibsboro local area plan.

“In effect, the failure to meet the SEA begins in 2006 and persists into the arms of An Bord Pleanála,” Mr Nix said. “Indeed, looking at what took place over these five years, the decision-making process is compromised by the very mischief that the SEA directive seeks to avoid.

“By failing to ascertain and study alternatives, we witness an unshakeable faith that the decision must be right in the first place. This cannot be the process, and is indeed the last thing the framers and those adopting the [SEA] directive . . . intended.”