



An  
Bord  
Pleanála

## Inspector's Report ABP-303179-18

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<b>Development</b>	Protected Structure. Permission for development of a two-storey roof extension and all associated works.
<b>Location</b>	Wynn's Hotel, 35-39 Abbey Street Lower, Dublin 1
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3131/18
<b>Applicant(s)</b>	Wynn's Hotel Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	Three third party appeals
<b>Appellant(s)</b>	Broadway Entertainment c/o Nina Cafolla; DET Ltd c/o Suzanne O'Neill; An Taisce c/o Kevin Duff.
<b>Observer(s)</b>	TII c/o Cliona Ryan
<b>Date of Site Inspection</b>	13/03/19
<b>Inspector</b>	John Desmond

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## 1.0 Site Location and Description

- 1.1. The application relates to the site of an existing, operational hotel, Wynn's Hotel, fronting onto Abbey Street Lower to the north, a short distance (c.14m) from O'Connell Street to the west. The existing building is 5-storeys (excluding small plant rooms above) over basement, with the top floor (fourth) being of mansard design setback behind a decorative parapet dates from the early 1920's and is a protected structure.
- 1.2. The site area is stated as 636-sq.m, and the building as 3,210-sq.m GFA. The upper floors of the building straddle Harbour Court, a lane running north to south from Abbey Street Lower to Eden Quay, with an eastern spur to Marlborough Street, which accommodates pedestrian and vehicular traffic via an archway of c.4.3m to Abbey Street; the entrance to the lane from Eden Quay is of a similar design, but the eastern junction to Marlborough Street is fully open without obstruction. Harbour Court appears as a severely neglected service lane, which is hostile to pedestrians and the general public due to poor passive surveillance arising from lack of active ground floor street frontage, blocked up or otherwise obstructed window views from upper level fenestration and capping of street level by various structures which render its northern section, in particular, dark and uninviting. It attracts active anti-social behaviour and low footfall despite its proximity to O'Connell Street and two Luas lines.
- 1.3. An open fire-escape staircase projects over Harbour Court to the rear of the building. There is no direct access to the lane from the hotel building, only indirectly via the hotel's service yard to the east side of the lane for service purposes only, which appears to be shared with no.36 Harbour Court.
- 1.4. To the west the site abuts and extends over the ground floor level of a commercial building, a former bank but now a public house known as Grand Central Station. To the east the site abuts the side of another commercial building which has a large window facing onto the courtyard. To the south it faces no.36 Harbour Court, a 4-storey brown-brick building which has fenestration on all floor of its north-facing

elevation onto Wynn's Hotel 3m to the north. The building to the east of no.36 is a modern building with no fenestration on its north elevation.

- 1.5. Nos.8 and 9 O'Connell Street Lower back onto Harbour Court, facing east towards the application site. There is an overpass to Harbour Court connecting no.8 O'Connell Street Lower and no.36 Harbour Court at first floor level.

## 2.0 Proposed Development

### 2.1. Summary description

- Two storey extension (part-cantilevered) to provide new sixth and seventh floor levels above existing hotel building, with 776-sq.m additional floor area and 92-sq.m terrace;
- Raising 5no. chimneys by 450mm;
- General fire safety upgrades and replacements of existing external fire escape and open walkways to the rear serving first to fifth floor level with new external covered walkways; fire safety works also include fire protection upgrade to existing internal staircase including new glazed fire screens at second to fifth floor levels, provision of enclosed firefighting stairs with metal cladding from first to seventh floor levels, new ventilated lobby to new firefighting lift within existing lift shaft servicing basement to seventh floor levels, and the relocation of existing fire exit from ground floor dining room, provision of new emergency escape stairs from basement to ground floor with a new exit door to the rear courtyard with associate alterations to existing external wall, and sundry minor internal partition alterations to facilitate new firefighting lobby;
- Reconfiguration of the east elevation window to Harbour Court at each of the first to fifth floor levels;
- New bespoke platform lift to main entrance;
- Removal of existing lift overrun structure and lift motor room, water tanks, service plant, 5no. non-original roof lights and 4no. disused chimneys to rear at roof level to facilitate extension;

- Total height of the structure proposed at 27.9m above ground excluding lift overrun;
- Total proposed additional floor area of 831-sq.m (total floor area of extended building increased to 4,049-sq.m GFA);
- Provides an additional 27no. en suite bedrooms and terraces at sixth and seventh floor levels, a covered walkway across an existing lightwell at sixth and seventh floor levels

## 2.2. Supplementary documentation (in addition to plans and drawings)

- Cover letter (28 May 2018) – prepared by GVA
- Planning Report – prepared by GVA
- Appropriate Assessment Screening – prepared by Scott Cawley
- Ecological Impact Assessment – prepared by Scott Cawley
- BMCE civil engineering infrastructure report for planning
- Preliminary CMP
- P MEP Mechanical, Electrical, Energy & Sustainability Strategy Report
- Historical Appraisal & Report – prepared by Dr Lynda Mulvin
- Architects design statement and schedule of areas
- Visual impact assessment
- Photographic survey
- Verified views / Photomontages Booklet – prepared by Pedersen Focus
- Letter of consent to make the application on lands within the ownership of Dublin City Council (April 2018)
- BMCE structural engineering report considering conservation aspects of the proposed structural interventions
- Archaeological Impact Statement – prepared by Claire Walsh, Archaeological Projects

- P MEP services engineering report considering conservation aspects of the proposed interventions

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

To **GRANT** permission subject to 16no. conditions. Conditions of note may be summarised as follow:

No.4 – standard type condition requiring submission of external finishes for agreement.

No.5 – conservation condition requiring, inter alia, the implementation of works to be designed, managed and monitored by an architect with appropriate conservation expertise, and submission of further details of proposed shutters were these differ from the design currently proposed in view of the CO's concern in relation to adequacy of support of same.

No.6 – drainage condition requiring, inter alia, minimum 3m clear separation distance between sewers (noting combined sewer 1450 brick culvert running through site) and all structures on site, the location of which must be accurately determined onsite prior to commencement of construction work.

No.7 – standard type archaeology condition.

No.13 – standard type TII condition relating to works potentially impacting on operation of adjacent Luas line.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. Planning Reports

The **final report (09/11/18)** of the planning officer indicated that the response of the applicant to the points of the request for further information were generally acceptable. The planning officer accepted the applicant's submission in respect of FI item (h) declining to include additional perforations to lighten the impact of the new roof and did not agree with the Conservation Officer's position that the vertical east face of the roof be replaced with a sloping face similar to the form on the north and

south faces, but accepted her concerns regarding the operation of the proposed folding shutters and recommended a condition be attached concerning same. The report is consistent with the decision of the planning authority and the conditions attaching thereto.

The initial **report (23/07/18)** of the planning officer is consistent with the decision of the planning authority to seek further information on the issue of site boundary discrepancies and on conservation details.

The planning offer considered: the principle of the proposed hotel extension to be consistent with development plan policy (CEE12 & CEE13 re tourist facilities and infrastructure); the 5.9:1 plot ratio to be acceptable in view of the provisions of s.16.5 of the development plan allowing an exceedance of the 3.0:1 standard in certain circumstances; the site coverage of 97% compared to maximum 90% for Z5 zone to be acceptable as the proposal does not increase site coverage and also in view of the provisions of s.16.5 of the development plan; the height of 27.9m to be compliant with the maximum 28m height limit for this area, excluding lift plant which is acceptable due to the 10m setback; the proposed extension not to significantly detract from the visual amenities of the conservation area due to the nature of the existing context and streetscape in which the views indicate it would read as a new standalone addition to the roofscape, clearly discernible from the protected structure, with scale and massing minimised by use of sloping the setback floors away from the parapet at the same angle as the mansard floor below and breaking down the addition into a series of separate shapes; the proposed materials to be acceptable.

The planning officer noted the conservation officer was of the opinion that the proposed additions would not significantly detract from the architectural significance of O'Connell Street and the wider historic core; that the cantilevered extension to the rear is dramatic but poses no particular architectural conservation concerns; and noted the recommendation for further information to clarify the impact on the protected structure.

The planning officer considered the potential impacts on adjoining properties to be greatest on the rear elevations of nos.8 and 9 O'Connell Street Lower and on no.36 Harbour Court. The planning officer concluded that subject to the external staircase cladding being of a lightweight colour, it would not be unduly overbearing or



significantly impact on sunlight and daylight access to the rear of said nos.8 and 9; that there is already mutual overlooking between the hotel windows and those at no.36; that in the event of redevelopment of no.36 the separation distance between 6<sup>th</sup> and 7<sup>th</sup> floor levels would not preclude its redevelopment; and that the predicted impacts are considered acceptable having regard to the inner city context.

The matter of enclosure of the shared fire-escape is considered a civil matter between the two parties.

The planner accepted the conclusions of the submitted Appropriate Assessment Screening report.

### 3.2.2. Other Technical Reports

**Drainage Division (26/06/18)** – no objection subject to conditions, including a site-specific condition addressing requirement for 3m separation distance from combined sewer.

**EHO (not dated)** – No objection subject to standard type conditions regarding CMP, noise control and air quality control during operations.

**City Archaeologist (12/07/18)** – Concurs with the conclusions of the archaeological desktop report submitted by the applicant that it is unlikely that archaeological material will survive on the site due to the extant basement covering the area. No objection subject to standard conditions.

**Conservation Officer (23/07/18)** – Further information was requested on 10 points of conservation detail, including the potential for further opportunities to lighting the impact of the proposed new roof form. The principle considerations were that the visual impact of the proposed additional storeys on O’Connell Street ACA and on the wider city is mitigated by the asymmetrical articulation of the roof and the variety of permeability and texture offered by the perforated elements of the metal clad extension, assisted by the retention of existing mansard, copper dormers and decorative guardrails. It is concluded that whilst the photomontages demonstrate that the proposed extension will be visible in some locations, the impact would not significantly detract from the architectural significance of O’Connell Street and the wider historic core; that the dramatic cantilevered extension to the rear does not give rise to any concerns in terms of architectural conservation, although the potential for

possible impact of that structure (and the new firefighting stairway within 1073mm of Harbour Court) on the development potential on Harbour Court is suggested.

**Conservation Officer (30/10/18)** – No objections subject to 7no. conditions. Non-standard conditions relate to the following:

- Recommends that modelling of the middle roof form on the eastern boundary be adjusted to replace the vertical face with a sloping face similar to that on the north and south faces to mitigate its visual impact and to consider how the proposed sheer vertical face of the western façade of the roof can be broken up to reduce the visual impact.
- Requires submission of further details of the proposed shutter prior to commencement of development if these differ from the design as currently proposed.
- Requires the submission of detailed architectural drawings indicating the existing historic fabric that will be removed / modified to accommodate the installation of the Sesame lift and the methodology for its installation.

Additional commentary explains the concerns regarding east and west facing roof articulation; that any significant enlargement of the structural frame or guardrails to the shutter elements would have a significant visual impact on the overall composition; and the positioning of the proprietary shutter catch would necessitate climbing onto the window sill.

### 3.3. Prescribed Bodies

Irish Water (26/06/18) – no objection subject to conditions, including a site-specific condition addressing requirement for 3m separation distance from combined sewer.

Failte Ireland (27/06/18) – Supports the proposed addition of 27no. bedrooms from a tourism perspective within context of current deficit of such accommodation facilities.

TII (31/10/18) – The position of TII remains as per letter of 04/07/18, attached [note this was received late and return], indicating no objection subject to compliance with the conditions specified by TII addressing potential impact on / conflict with Luas infrastructure and operations.

An Taisce (30/10/18) – The revised plans have not made adequate changes in response to FI item no.2.

### 3.4. Third Party Observations

3no. letters of observation were received to the application from DET Ltd c/o Suzanne O'Neill (25/06/18), Broadway Entertainment c/o Nina Cafolla (02/07/18), the occupants of no.8 O'Connell Street Lower c/o Gerry Lynch (02/07/18 and 29/10/18). The points of observation of DET Ltd and Broadway Entertainment are repeated in the grounds of appeal and are summarised under section 6.1 below. The observations of Gerry Lynch (owner occupier of part of no.8 O'Connell Street Lower and part of no.36 Harbour Court) require elaboration and are summarised as follow:

- The main points of objection relate to the permanent closing off of the shared fire escape located in a shared access space which is need for the protection of occupant of the building (assumed to refer to no.36).
- The proposed cantilevered upper floor extension will greatly overshadow the existing side facing windows on no.36 Harbour Court and block light to first-fifth floors of no.8, including kitchen, living and bedroom spaces.
- Concern regarding the positioning of the side windows directly opposite the building, for which there are fire space separation issues to be considered (TGD Part B) with the percentage of openings dictated by the distance to the relevant/notional boundary.
- The proposed south facing windows will prevent any potential for raised development at no.36 Harbour Court and should be omitted.
- The preliminary CMP indicates that the site will be formed across our properties, ignoring the location of the first-floor link corridor over the lane. Access to the site will be under the link corridor, blocking off access to our home at no.8 via the link which is used daily from the garage space [presumably at 36 Harbour Court]. [Note – the copies of the drawings attached to the observation are illegible.]
- The items requested in the FI did not address the issues of raised concerning building regulations and proper planning. Suggests that the planner is not

impartial and defends all elements of the proposed development, including the cantilevered rooms on the basis of the location of an existing lift shaft that must be maintained.

- Is the planner qualified to comment on technical fire concerns in relation of separation distance of the proposed development from the objector's building? The applicant's architect / fire consultant should have been asked to address this concern. TGD B governs fire space separation, with the percentage of openings dictated by distance to relevant / notional boundary – a distance of 1m means the window to wall ratio should be less than 1%. The proposed south-facing windows pose a threat to the skylight and the spread of fire between both buildings.
- The buildings pre-date building regulations and do not set precedent and should not be used to justify encroachment and dangers to the adjoining lower property.
- The issue of overshadowing was dismissed without a professional review of the impact.
- The omission of the cantilevered bedrooms would alleviate genuine concerns of overshadowing, devaluation and detracting from the properties.
- The applicant must be requested to demonstrate in the form of legal mapping the extent of ownership of the site, including rights of way or burdens; concern that the active fire escape from no.36 Harbour Court, shared with the hotel, will be closed off by the development, which was not noted by the planning officer; and need to clarify the proposed glazing / framing details (concerning proposals for fire rating) to demonstrate that sufficient fire protection will be provided on an escape route in residential accommodation where the occupants are not familiar with the premises.

#### 4.0 **Planning History**

##### On site :

No recent relevant planning history.

Within vicinity :

**Reg.Ref.1546/08 (extended Reg.Ref.1546/08/x1)** - Permission **GRANTED** by the planning authority (FGD 02/10/08) for development of VHI House including former Scots Presbyterian Church and Church Hall facing onto Abbey Street Lower; and former Lecture Hall with ancillary rooms to the rear (south). 'Ormonde Quay and Scots Presbyterian Church' are listed as a protected structure'. The development included, among other things, modifications and extension to the existing structures and for change of use from ecclesiastical to office use as part of the planned expansion of the VHI Healthcare Office Headquarters at Abbey Street Lower, with the existing structures integrated within a new office extension of between 3 and 7-storeys in height to surround and internalise the church hall and will sit above the former lecture hall.

**Reg.Ref.4657/18:** Current **UNDECIDED** application for the change of use of the upper floors within no. 8 O'Connell Street Lower from residential along with change of use of existing commercial floorspace within no. 3 Harbour Court [note, the drawings indicate this is the same as no.36 Harbour Court] to provide a boutique hotel consisting of 26 number en-suite bedrooms on first, second, third and fourth floor of No 8 Connell Street and to the ground, first, second and third floor of No. 3 Harbour Court. The development will include for 1 no. 1 bed apartment at second floor level to No. 8 O'Connell Street Lower. Internal re-configuration works to include provision of a reception area, WC, kitchen, bicycle/storage area, upgrade of existing internal lift, associated signage, change of finishes externally to existing link corridor between no.8 O'Connell Street Lower & No. 3 Harbour Court, alterations to roof finishes and replacement of windows to No. 3 Harbour Court, connection to existing site services and all associated works.

## 5.0 Policy and Context

### 5.1. Development Plan

**Land use zoning objective** - Z5 City Centre *'to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity'*.

**Other objectives** – Protected Structure; O’Connell Street Architectural Conservation Area; Zone of Archaeological Interest for Dublin City (RMP DU018-020).

**Chapter 4 Shape and Structure of the City** – S.4.5.4.1 *Approach to Taller Buildings*; Policy SC16 (building heights);

S.4.5.5 *Public Realm* - Policy SC19 (safe streets and encourage walking); Policy SC20 (high quality streets); Policy SC21 (safe streets and public space).

**Chapter 6 Enterprise** – S.6.5.3 *Tourism/Visitors Policy*; CEE12 (i) ‘*To promote and facilitate tourism as one of the key economic pillars of the city’s economy ... and to support the provision of necessary increase in facilities such as ... hotels ...*’, (ii) ‘*To promote and enhance Dublin as a world class tourist destination...*’; and CEE13 (i) ‘*To work with Failte Ireland and other stakeholders to deliver on the ambitious targets set out in ‘Destination Dublin’ – A Collective Strategy for Growth to 2020 (...including the aim to double visitor numbers by 2020)*’.

**Chapter 11 Built Heritage and Culture** – Policy CHC2 ‘*To ensure that the special interest of protected structures is protected....*’; Policy CHC4 ‘*To protect the special interest and character of Dublin’s Conservation Areas...*’

## 5.2. Guidelines and Reference Documents

*Design Manual for Urban Roads and Streets* (DTTS & DECLG, 2013)

## 5.3. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.7km at the nearest distance (to NE).

South Dublin Bay SAC Site 000210 c.3.8.0km at the nearest distance (to SE).

North Bull Island SPA Site 004006 c.5.6km at nearest distance (to E-NE).

North Dublin Bay SAC Site 000206 c.5.6km at nearest distance (to E-NE).

## 5.4. EIA Screening

- 5.4.1. The proposed development is development of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 10.

Infrastructure projects, (b)(iv) Urban Development. However, at 0.0623ha, the site area is significantly subthreshold the 2ha limit provided under that part, and the site is not of particular environmental sensitivity and therefore EIA is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The main grounds of the third-party appeal by **Broadway Entertainment c/o Nina Cafolla (07/12/19)** may be summarised as follow:

- The serious concerns raised in the submission to the application were not addressed by Dublin City Council in their decision or by way of further information request.

The main points of the observation referred to, as attached to the appeal, may be summarised as follow:

#### Impact on Harbour Court

- The observer is the owner of the basement portion of no.36 Harbour Court adjacent to Wynn's Hotel at the rear, in addition to the ground floor and basement of no.8 Lower O'Connell Street.
- The application moves the building line of Wynn's Hotel to immediately adjacent no.36 Harbour Court.
- The placing of windows in this elevation presupposes that in the future there will be no development of 36 Harbour Court to the height of the proposed bedrooms, or other such development with elements incompatible with being overlooked or adjacent to bedrooms for reasons of noise, flue gasses or other environmental reasons such as a lift motor room or an air handling unit.
- The proposed bedrooms will gain a right to light or other rights which will inhibit the development of 36 Harbour Court.
- The observer is considering developing 36 Harbour Court for residential use, to include roof garden, the residential amenity o which would be compromised by overlooking by bedrooms within the proposed development.

## Stairs

- The existing hotel is served by an existing external stair fire escape overhanging Harbour Court. This ad hoc arrangement, necessary for fire safety overhangs public space.
- The proposal to consolidate this arrangement, effectively an acquisition of that land for a substantial and solid development of additional area for the hotel, is not acceptable as it is public airspace.
- The proposed development will have an overbearing effect on Harbour Court, making it darker. We should be looking for ways to make the lanes of O'Connell Street brighter and safer, not even more backland.
- The stair should be pulled back into the volume of the property, not overhanging the lane and resulting in substandard public space. This would contribute to more open visibility and overlooking / supervision of Harbour Court from within the stairway / corridor rather than compounding the existing poor situation.
- The proposal to extend this area further comes within an unacceptably close distance to the first-floor bridge between no.8 O'Connell Street Lower and no.36 Harbour Court. The real and substantial risk of damage during construction of the multi-storey stair can be avoided by withdrawing the stairs into the main building line.
- Serious concern regarding the constructability of the proposed scheme and the potential impact on the stability of no.36 Harbour Court during construction.

6.1.2. The main grounds of the third-party appeal by **DET Ltd, c/o Suzanne O'Neill (07/12/18)** may be summarised as follow:

- The 2-storey addition will obstruct the right to natural light for tenants of no.4-8 Eden Quay and Harcourt Lane [sic].
- The development should be scaled back so as to be less intrusive.
- The architectural nature and design of the building needs to be preserved.



6.1.3. The main grounds of the third-party appeal by **An Taisce, c/o Kevin Duffy (10/12/18)** may be summarised as follow:

- The application site is in a prominent location within the O'Connell Street area which has been subject of various plans and initiatives over the past 2 decades with the end of restoring its status as the premier civic area and thoroughfare of the city centre, including the IAP 1998, Architectural Conservation Area statement 2001, and Special Planning Control Scheme 2003/2009.
- The upgrading of Wynne Hotel is welcome in principle as part of the upgrading of the O'Connell Street area, which building formed part of the classical reconstruction of the area after the destruction of 1916 and 1922, with consistent height lines being an integral feature and the hotel building shares a cornice line with the corner building to the west which runs down O'Connell Street to the quays and unifies the block.
- The proposed 2-storey addition, in view of its location, scale and form above the existing coherently designed building and roof is problematic in its impact on the Protected Structure and on the streetscape of the ACA.
- The proposed 2-storey addition to this building which is higher than the adjoining buildings to the west and east by one and two storeys, respectively, is prominently visible to this stretch of O'Connell Street Lower between the GPO and Abbey Street Middle, will produce a very considerable jump in the scale of the street notwithstanding the efforts of the design to break down the massing.
- The proposed height is within the 28m height limit under the plan, but height limits do not stand alone and must be viewed against other planning considerations, including the Protected Structure status of the building and its location with the ACA.
- Conflicts with policy CHC2 to protect the special interest of protected structures, having regard to building which has been designed to a particular form, scale and proportion,

- Conflicts with policy CHC4 in terms of the requirement of the ACA statement (Part II – Development Control; A. New Development) that new development should respect the established scale of the existing built fabric, including height, massing, proportions and plot width.
- Relevant decision precedents to be considered in the Board’s assessment include the proposed redevelopment of the Gresham Hotel (condition no.2 of PL29.230110 reduced height of and required inclined façade and setback to proposed penthouse level) and the Shelbourne Hotel (PA refs.0882/03, 4489/05 and 3815/08 provided from development within the historic profile and silhouette of the existing 19<sup>th</sup> C hotel) and the Penny’s building on O’Connell Street Lower (refusal on 2no. additional floors on grounds it would seriously detract from the civic design character of O’Connell Street under PL29N.224640).
- The details of the Irish Arts Review feature on Sackville Street / O’Connell Street is noted.

## 6.2. Applicant Response

The main points of the first party’s detailed response to the grounds of appeal, in addition to points raised in observations on the application, received 15/01/19, may be summarised as follow:

### General response -

- **Planning policy** – will contribute to the consolidation and densification of Dublin City, which is supported by national (NPF national strategic outcomes of achieving compact growth; Urban Development and Building Height Guidelines 2018 which recognises the better and more compact forms of future development through upwards growth), regional (RPG 2010-2022 regarding tourism promotion) and local policy (Dublin City Development Plan 2016-2022 Z5 zoning objective to consolidate and facilitate development in the central area; and policies CEE12 and CEE13).

Responding to appeal by An Taisce – Response prepared by McCullough Mulvin Architects (Grade 1 Conservation Architects):

## **Impact on Wynn's Hotel and surrounding ACA**

- The hotel has a rich cultural heritage of the hotel over 150 years but needs to increase capacity due to market pressures.
- The proposal for innovative roof level extension was made with a great deal of consideration and care by the applicant having regard to O'Connell St ACA, the immediate environs of the hotel and the city as a whole, with the appointment of an experienced design team led by McCullough Mulvin as Grade 1 Conservation Architects with experience of making crafted buildings in some of the most sensitive locations in Dublin.
- The vision for the proposed development drew inspiration internationally from cities such as Paris and Vienna and the interest in creating architecturally innovative spaces and destination hotels, a brand of design which is in its infancy in Dublin.
- Rooftop additions, being a necessity, also provide opportunities for design innovation as illustrated by the Caixa Forum Madrid, the Stealth buildings New York, and etc., (see s.2.2 of the response for images) and were inspired by the small rooftop gazebos and corner towers on O'Connell Street, wrapped in metal cladding to evoke the roof features of the ACA in a contemporary piece of architecture, floating above slate roofs.
- The proposed rooftop extension will contribute to adding a new and distinctive layer to the city, with a series of tapered roofs of differing heights with the character of a city hive.
- Perforated shutters seek to make the volumes simple and clear and when open will create activity, along with the balconies, to enhance the amenity value of the rooms.
- Existing layout and constraints – existing arrangement of historical features (lift and stairs) within the protected structure impose constraints on the interventions that can be carried out and determine the arrangement of new accommodation which substantially reflects the arrangement of the rooms below.

- The tapered roofs contain additional rooms and also conceal all essential plant and equipment (currently exposed above existing roof) within a consolidated discrete series of volumes.
- Proposed roof design respects the existing mansard and features, assimilates with same, but remains distinct from the protected structure and is not designed to be an invisible box, but to be perceived as a single-storey element.
- The applicant spent considerable time discussing and meeting with the planning authority, including the conservation officer, at pre-planning stage, with the design progressed through a number of iterations.
- The VIA and photomontages comprise verified views from all around the ACA, identified in consultation with the planning authority and demonstrate, according to the planner's and conservation officer's reports, that the proposed scheme would not significantly detract from the visual amenities of the conservation area.
- The planning authority, including the officer and the conservation officer support the proposed development as demonstrated by their positive assessments and generally accepted the applicant's decision not to lighten the roof at further information stage.

### **Response to An Taisce's appeal**

- The proposed extension has been designed to form a positive contribution to the skyline in line with the principles set down by Horace O'Rourke which allows for feature roofs and details which are set above and behind a parapet line and is in keeping with the scale and massing of the ACA.
- There is a change in scale between the main backbone of O'Connell Street and the lesser streets to the east and west and it is not agreed that the change in scale has become excessive in the subject proposal and the photomontages support this.
- It is not agreed that the roofscape is 'excessively visually dominant'. The submitted documentation demonstrates that, from all angles within the ACA the proposed extension fits well within the general framework of scale and

massing of the area and recedes behind the parapet line and creates a more attractive roofscape than is current.

- The proposed extension is not visible from key views within the ACA (views 8, 9 10 and 11). The view (7) from Eason's, O'Connell Street, is visible but positive, suggesting a lively new addition to typical features at roof level to be seen throughout the ACA.
- View 6 from Abbey Street shows the chimneys shielding and mitigating the change of scale which has always been a feature of this step down from O'Connell Street; view 5 shows the variation in scale on Abbey Street including the undulations of roof associated with the new VHI building.
- View 4 from south of the river shows the proposed roofscape visible as part of the general streetscape behind the dominant Astor building; view 2 from O'Connell Bridge shows the proposed roofscape visible but diminutive between existing buildings at the corner of O'Connell Street and Eden Quay; and the proposal is not visible from Rosie Hackett bridge (view 1).
- The appellant hasn't set out the specific grounds on which it believes the proposed development conflicts with state policies in the development plan concerning protected structures and the ACA, but only a vague statement, and the applicant does not agree that it is conflict with the protected structure and ACA, but is in tune with the original concept of Horace O'Rourke and is a unique approach to rooftop additions within a living, compact city and preserves the special character of Wynn Hotel and is sympathetic to the ACA, whilst being a piece of architecture in its own right.
- The cases referred to in the appeal (Penney's Building, Gresham Hotel and Shelbourne Hotel) are note specifically relevant to the proposed extension – the roof extension to the Gresham was a glazed box on the main thoroughfare of O'Connell Street ACA, compared to Wynn's proposed high quality work of architecture off the main thoroughfare; the Shelbourne proposal included the removal of the original roof forming part of the protected structure and to provide an overbearing roof thrust out to the street edge of Stephen's Green in a highly visible and sensitive location, whereas the Wynn proposal is set out in a series of intense small scaled pitched roof volumes, keeping the scale

and massing to a minimum; the scale of the Penney's Building proposal is significantly larger than that proposed at Wynn's Hotel, a massive scheme merging numerous buildings of interest in themselves to make a hybrid scheme and is no comparable to that proposed for Wynn's Hotel.

### **Impact on natural light of adjacent properties**

- No.4-8 Eden Quay is c.20m directly south of the proposed rooftop extension, with sufficient distance such that there is no risk of any obstruction to the amount of sunlight enjoyed by that property.
- A Daylight, Sunlight and Overshadowing Study has been prepared by IES Consultants to quantify the impact on neighbouring residential and commercial properties (attached as Appendix II), determining that no shading is visible from Wynn's Hotel extension on the upper office floor of this mixed used property as the block sits south of the development site; in terms of daylight impact it determined that all the tested points have a vertical sky component of not less than 0.8 times their former value (i.e. their existing value) and the proposal is compliant with the BRE recommendations.
- The DSO Study findings are consistent with the planning authority's assessment of the impact and the proposed development will not have an undue negative impact in terms of daylight on nos.4-8 Eden Quay.
- The appellant fails to specify how the proposed development is 'intrusive' and, given the separation distance to nos.4-8 Eden Quay it is considered that the appellant's position is subjective, indeterminable and without merit, and the planning authority concluded that no further amendments were necessary notwithstanding the comments of the conservation officer.
- The overall design seeks to protect the special character of Wynn's Hotel protected structure, as was accepted by the conservation officer.

### **Impact on no.36 Harbour Court and no.8 O'Connell Street**

- There will be negligible impact on the appellant's property which includes the basement portion of no.36 Harbour Court only and the ground floor and basement of no.8 O'Connell Street, and the appellants arguments about

potential impact on the future development of no.36 are highly speculative considering the ground floor and above appear to be in separate ownership.

- The planner's report noted the reason for the cantilevered design due to the site constraints (existing lift shaft and existing 3m separation distance from the neighbouring property).
- Perceived overlooking already exists between the rear of Wynn's Hotel and no. 36 Harbour Court already and the height of no.36 is c.10.43m smaller than the existing height of Wynn's Hotel and the proposed development will therefore have a negligible impact on the appellant's property.
- The proposed distance of the development to the boundary with no.36 was discussed at pre-planning consultation stage and the design was subsequently setback from the rear boundary by c.1m at the planning authorities request in order to reduce the impact and protect the development rights of no.36.
- The resulting proposed development does not impact the development rights of the adjoining property in any way, or inhibits its development potential, as was accepted in the planner's assessment, which is reasonable taking account of the central urban location, the constraints of such tight spaces within conservation areas and the need to ensure efficient utilisation of such lands.
- The planning authority's assessment is consistent with the Board's decision on similar developments in similar locations such as the mixed-use development by TCD fronting onto Pearse Street, Sandwith Street and Cumberland Street (PL29S.222104), with the Inspector's Report accepting '*that overlooking and overshadowing in a built-up inner-city context is inevitable*'. This decision remains relevant having regard to the policy context supporting consolidation, sustainable intensification and compact growth of towns and cities.
- There is already overlooking between the rear of Wynn's and no.36 Harbour Court and any future development of no.36 will be assessed on its own merits.

- The appellant's request to omit the bedrooms overlooking no.36 is not reasonable or justified and would jeopardise the viability of the entire scheme and the planning authority has clearly stated that no further amendments are required.
- The appellant's concern about the acquisition about public air space was addressed by the letter of consent from DCC consenting to the inclusion of these land for the purpose of making the application, in accordance with the provisions of the Planning and Development Regulations 2001, as amended.
- A CMP prepared by Barrett Mahoney Consulting Engineers was submitted with the planning application, including a construction sequence, and condition no.8 attached to the decision is intended to safeguard the amenities of the existing and future residents of the area during and after construction, which can be dealt with through compliance.

#### **Daylight, Sunlight and Overshadowing Study**

- The potential shadow cast is similar to that of the existing situation and any impact on the three properties concerned can be said to be negligible.
- The daylight impact assessment on no.36 Harbour Court shows that its VSC values currently are less than 5% for all points tested on its northern elevation (facing Wynn's Hotel), which means (as stated under s.2.2.6 BRE Guide) it's impossible for these locations to achieve reasonable levels of daylight even if the entire window wall is glazed. This suggests that these windows currently are not able to utilise natural daylight for performing function in these rooms without the likelihood of supplementary artificially lit currently, especially for windows at lower levels (basement and ground).
- The VSC on no.8 O'Connell Street Lower is just less than 0.8 times their current value in line with BRE recommendations, with the greatest reduction being 26% compared to the BRE recommended maximum of 20%, which would be classed as a minor adverse impact being marginally outside the guidelines.
- The VSC on nos.4-8 Eden Quay (Astor Hall) are not less than the 0.8 times their existing value in line with BRE recommendation.



- The BRE guidance is not mandatory and provides numerical guidance which should be interpreted flexibly as natural lighting is only one of many factors in site layout design. BRE guidance targets have been drafted primarily for use in low-density suburban development and should be used flexibly and with caution in other contexts, however the proposed development is broadly in line with same with some minor adverse impacts experienced locally. Any impacts to lower level windows will be difficult to perceived given the existing lower values experienced at these locations.

### 6.3. Planning Authority Response

None.

### 6.4. Observations

**TII (03/01/19)** – No new points or issues.

### 6.5. Further Responses

The main points of the further response from **DET Ltd (06/02/19)** c/o Suzanne O'Neill may be summarised as follow:

- Does not accept the points made that the hotel's location off the main thoroughfare means its importance significance should not be protected by ABP.
- If the lift and stairs were to be relocated it could allow the top floor plan to be scaled back and still remain viable.
- There is insufficient distance from nos.4-8 Eden Quay abutting Harbour Court.
- In the event of a fire within the cantilevered section the increased proximity to no.4-8 Eden Quay could increase the probability of Eden Quay catching fire.
- If the proposed top floor was stepped back from the Harbour Court aspect and reduced in size, it would reduce the impact and keep a safer distance apart from between Wynn's Hotel and no.4-8 Eden Quay.

## 7.0 Assessment

The main issues arising in this case may be addressed under the following headings:

- 7.1 Policy / principle
- 7.2 Impact on architectural heritage – visual impact
- 7.3 Impact on architectural heritage – physical impact
- 7.4 Impact on amenities of surrounding property
- 7.5 Impact on Harbour Court street
- 7.6 Appropriate Assessment Screening

### 7.1. Policy / principle

- 7.1.1. The appeal site is zoned Z5 City Centre where it is the objective '*to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity*' under the Dublin City Development Plan 2016-2022. The existing historic hotel use of the premises, which is to be refurbished and extended, is permitted in principle on Z5 lands.
- 7.1.2. The principle of providing additional tourist infrastructure, including accommodation, is consistent with policies CEE12 and CEE13 under section 6.5.3 *Tourism/Visitors* of the Development Plan. I consider the rationale for the proposed development, as set out by the applicant in the application, including in the Planning Report, to be reasonable and the application is supported by Bord Failte.

### 7.2. Impact on architectural heritage – Visual Impact

- 7.2.1. The existing hotel is a protected structure and is situated within the O'Connell Street Architectural Conservation Area. The proposed 2-storey rooftop extension therefore clearly has potential to materially affect the character of a protected structure and to materially affect the integrity of an ACA.
- 7.2.2. The relevant policies and objectives concerning the protection of built heritage are set out under chapter 11 *Built Heritage and Culture* of the Development Plan, including CHC2 to ensure protection of the special interest of the protected structure, and policy CHC4 to protect the special interest of Dublin's conservation areas.

- 7.2.3. CHC4 requires '*development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible*', but recognises that '*enhancement opportunities may include ... contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area*'. It also provides that '*Development will not...Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, Harm the setting of a Conservation Area [or] Constitute a visually obtrusive or dominant form*'.
- 7.2.4. Regarding building height, the Development Plan (chapter 16 Development Standards) recognise the need to protect conservation areas and the architectural character of existing buildings, streets and spaces of artistic, civic or historic importance. In particular, any new proposal must be sensitive to [*inter alia*] the historic city centre. The height of the proposed roof extension, excepting the proposed lift overrun structure (29.5m), does not exceed the 28m limit for commercial development in the inner city under s.16.7.2 *Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development* of the Development Plan for such areas. The Council's height strategy allows for lift overruns to be excluded from the height limit as long as they are set back.
- 7.2.5. Regarding building height limits, the *Urban Development and Building Heights Guidelines for Planning Authorities* (December, 2018) highlight that the provisions of the Part VI of the Planning and Development Act 2000, as amended, regarding architectural heritage and associated character/setting remain in place, and advise that the planning authority may reference, *inter alia*, the *Architectural Heritage Protection Guidelines for Planning Authorities* (2012). They do not suggest that increased height will be appropriate to all inner-city contexts.
- 7.2.6. The appeal by An Taisce considers the proposed 2-storey addition, in view of its location, scale and form above the existing coherently designed building and roof, to be problematic in its impact on the protected structure and on the streetscape of the ACA, being higher than the adjoining buildings to the west and east by one and two storeys, respectively, and prominently visible to this stretch of O'Connell Street Lower between the GPO and Abbey Street Middle, to produce a very considerable jump in the scale of the street notwithstanding the efforts of the design to break down

the massing. On this basis An Taisce considers the proposed to conflict with policy CHC4.

- 7.2.7. The proposal was subject of several pre-planning consultation meetings with the planning authority at which the landowner was advised to bring the height down to below 28m in addition to other visual impact and conservation issues. The reports of the council's the conservation officer are summarised in detail, above. The first report of conservation officer, Mary McDonald, raised no objections and considered the impact would not significantly detract from the architectural significance of O'Connell Street and the wider historic core and that the dramatic cantilevered extension to the rear did not give rise to any concerns in terms of architectural conservation, although she did request further information on conservation detail, including that the applicant clarify whether any further opportunities exist to 'lighten' the impact of the new roof forms with introduction of additional perforations.
- 7.2.8. In her report subsequent to receipt of further information response (no amendments to the roof structure were introduced in the FI response) she recommended a grant subject of conditions, however she raised concerns regarding the visual impact of the east and west facing elevations of the proposed roof and recommended a condition be attached requiring the adjustment of the eastern roof form to replace the vertical face with a sloping face similar to that on the north and south faces, and to consider how the western roof face could be broken up to mitigate the visual impact. This condition was rejected by the planning officer and the said condition was not attached to the decision.
- 7.2.9. The applicant has submitted extensive photomontages of the proposed development, the viewing points having been selected in consultation with the planning authority according to the applicant. In addition, the applicant submitted a Visual Impact Assessment report assessing the visual impact based on the photomontage views, and an Architectural Design Statement setting out the design rationale within the site context to assist in the determination of this case and the Board may have regard to same.
- 7.2.10. The views from O'Connell Street may objectively be considered the most sensitive. The potential visual impact is represented in views 3, 7, 8 and 9. The proposed development is clearly visible only in view 7. As Wynn's Hotel building is visible on

O'Connell Street from the junction with Abbey Street north to the junction with Prince's Street north adjacent the GPO, the potential for significant visual impact is largely limited to that section of O'Connell Street. If view 7 may be considered in some way representative of the greatest visual impact on O'Connell Street, I am satisfied that the proposed extension will not be unduly intrusive on the character of the O'Connell Street ACA. It is possible that the proposed roof extension will obtrude over the strong parapet line of the existing buildings on the east side of O'Connell Street from certain viewing points, as suggested by view 3, including on approach from the west along Abbey Street Upper. However, I consider the potential visual impact on O'Connell Street will not be significant.

- 7.2.11. The visual impact in viewing points to the south of the river Liffey, where the proposed structure will be visible, is considered acceptable within its context as the roofscape presenting to the quays is varied and continuing to evolve in this section of the city. The structure will be visible along the river extending eastwards as the existing roof level of the hotel commands extensive views in that direction currently. I do not consider the potential impact to be excessive.
- 7.2.12. The VIA did not include an assessment of the impact to the rear, inclusive of the proposed replacement fire escape stairwell. The visual impact of same would be highly localised within the ACA, confined to views from within Harbour Court. In this regard, the visual impact would be significant, but would not be discordant with the utilitarian character of this lane. It would not have a significant adverse impact on the character of the protected structure.
- 7.2.13. On balance, I would concur with the decision of the planning authority that the visual impact of the proposed development is acceptable.

### **7.3. Impact on architectural heritage – Physical Impact**

- 7.3.1. The Board may note the content of the *Historical Appraisal and Report* and the detailed photographic survey of the existing structure submitted with the application in its consideration of the potential impact of the proposed development on the built heritage of Wynn's Hotel.
- 7.3.2. Apart from the proposed 2-storey addition, the most significant alteration to a key architectural element is the proposed for Sesame Access System at the entrance

steps to accommodate wheelchair access, necessitating removal of one half side of the flight of steps. This details on file and available online, show that the proposed SAS will be in-keeping with the character of the entrance steps and generally unobtrusive when not in active use.

- 7.3.3. Another significant intervention is the proposal for an enclosed fire escape stairway to replace the existing open steel fire escape. As this is located on the rear elevation which is of a functional or utilitarian design, the proposed addition does not have a significant adverse impact on the built heritage, although I don't consider its impact to be positive or even neutral.
- 7.3.4. The conservation officer and the planning authority were satisfied that the proposed development would not significantly impact on the built heritage associated with Wynn's Hotel, with the retention and protection of almost key architectural elements of the structure within the proposed development. The conservation officer recommended standard conditions to be attached in this regard, in addition to a condition requiring the submission of detailed architectural drawings indicating the existing historic fabric that will be removed / modified to accommodate the installation of the Sesame lift and the methodology for its installation. In the event the Board upholds the decision of the planning authority it would be appropriate to attach similar conditions.
- 7.3.5. I would concur with the planning authority that the proposed development would not significantly impact on the built heritage of Wynn's Hotel subject to the attachment of the conservation conditions attached by the planning authority.

#### **7.4. Impact on amenities of surrounding properties**

- 7.4.1. For this section of the assessment, the Board will find it of assistance to view pages 4, 5, 6, 8 and 9 of the applicant's photographic survey, in addition to the existing and proposed sections drawings AA, BB and CC and 5<sup>th</sup> and 6<sup>th</sup> floor plans.
- 7.4.2. Given the inner-city location of the application site, the proposed development is in very close proximity to neighbouring buildings to the rear. The existing hotel is separated from the opposing buildings by just under 3m (2.923m), except at ground floor level where the majority of a former courtyard or lane between the properties is now occupied by a modern single-storey extension to Wynn's Hotel. A narrow

passage allows service access to Harbour Court, shared only by the hotel and no.36 Harbour Court to the south.

- 7.4.3. No.36 Harbour Court is an old, brown-brick four-storey building with windows on all levels of the north-facing elevation facing onto the hotel's rear elevation. The use of the building is unclear but there is evidence that it is in some active use and is maintained and there is a current application for change of use of this building and no.8 O'Connell Street Lower (or parts thereof) to hotel use under Reg.Ref.4657/18. It appears to be structurally sound, with its north elevation in particularly good condition. It has street frontage on two sides (west and south) at the junction of Harbour Court and Harbour Court. Note, some of the section drawings incorrectly show a mansard type design to the north elevation at third floor level of no.36, but this design element only exists on that building's west and east elevations. There is most potential for significant adverse impacts on no.36 Harbour Court arising from the proposal.
- 7.4.4. Nos.8 and 9 O'Connell Street Lower back onto the westside of Harbour Court, with fenestration facing east, some of which has been permanently blocked up, some closed up in a less permanent manner with timber and others which are evidently windows to habitable rooms (to no.8). The windows to no.9 do not appear to be to habitable rooms and may be regarded as less sensitive. There is potential for possibly significant adverse impacts on no.36 arising from the proposal.
- 7.4.5. The other opposing structure to the southeast (address unknown) is a modern structure of four-storeys, although its northern elevation appears to belong to an earlier building except for the mansard type roof at third floor. It is without fenestration to the north elevation at all levels. The four-storey modern extension to the building to the east has a large window overlooking onto the space at first floor level. There is some potential for possibly significant adverse impacts on those two properties, although no observations or appeals have been made by the owners of those properties.
- 7.4.6. Nos.4-8 Eden Quay and Harbour Court is a modern development (c.6-storeys) south of no.36 Harbour Court, c.20m south of the application site boundary, with frontage onto Harbour Court (west-east spur) and to Eden Quay. Notwithstanding the content

of the appeal by DET Ltd, I do not consider there to be potential for adverse impacts of significance on nos.4-8 Eden Quay and Harbour Court.

- 7.4.7. **Loss of sunlight and loss of daylight** – The main potential impact is access to sunlight and daylight to surrounding properties due to the proposal for the 2-storey 6<sup>th</sup> and 7<sup>th</sup> floor extension to project south over the rear courtyard and towards the facing buildings by between 2.0m to 2.5m (west to east, respectively), with a proposed separation distance of c.1m-1.25m. This would be mitigated to a degree by the height of the said proposed extension which would commence c.7.3m above the parapet height of no.36 Harbour Court.
- 7.4.8. However, it is also proposed to provide a firefighting stairwell from first floor to 6<sup>th</sup> floor level, attaching to the 5<sup>th</sup> and 6<sup>th</sup> floor extension, along 2m of the 3m laneside boundary to Harbour Court to the west, within 1m of no.36 Harbour Court. Together the two extensions will enclose the majority of the opening above and to the west side of the courtyard. As the rear of the hotel building benefits from a southerly aspect the loss of sunlight to the hotel would be minimal and the loss of daylight would be of less significance.
- 7.4.9. The applicant submitted a *Daylight, Sunlight and Overshadowing Study* in response to the appeal, which included a review of the potential impact on no.36 Harbour Court. The applicant's assessment of Vertical Sky Component (VSC) found the north-facing elevation of no.36 would not experience significant overshadowing as its windows receive almost no direct sunlight due to their north-facing orientation and the surrounding built context. The daylight impact assessment on no.36 Harbour Court shows that its VSC values currently are less than 5% for all points tested on its northern elevation (facing Wynn's Hotel), which means (as stated under s.2.2.6 BRE Guide) it's impossible for these locations to achieve reasonable levels of daylight even if the entire window wall is glazed. This suggests that these windows currently are not able to utilise natural daylight for performing function in these rooms without the likelihood of supplementary artificially lit currently, especially for windows at lower levels (basement and ground).
- 7.4.10. It is inarguable that the proposed extensions over and to the west side of the courtyard will further reduce access to daylight to the windows of no.36. I consider this to constitute a significant impact. That the structure has the benefit of



fenestration to the south and west means the north-facing windows may be of less importance, but it does not mean that it is reasonable to casually further reduce their low level of amenity (in terms of daylight access) to benefit a neighbouring landowner.

- 7.4.11. The applicant's VSC on no.8 O'Connell Street Lower found the access to daylight to relevant windows (which are residential windows) would be just less than 0.8 times their current value. It is submitted that this is in line with BRE recommendations, however the greatest reduction would be 26% compared to the BRE recommended maximum of 20% and therefore would be outside the guidelines albeit relatively marginally. The loss of daylight can reasonably be assumed to arise from the proposed firefighting stairwell rather than from the 2-storey rooftop extension. The assessment did not consider the potential impact on no.9 O'Connell Street Lower which can be assumed to be greater in terms of actual impact (due to proximity to the development proposed) but of less significance in terms of the use of windows affected (no appeal or observations were received in respect of that property).
- 7.4.12. The applicant submits that BRE guidelines were designed to facilitate assessment of impact on suburban areas and not urban environments and are not directly applicable to urban environments. I do not know this to be the case, but logically greater sunlight and daylight impacts will arise and will be accepted within inner city environments such as this. This does not mean, however that proposed developments do not need to be designed to minimise such impacts. On balance I consider the sunlight and daylight impacts arising from the proposed development to be excessive and avoidable, and that the form and arrangement of the development outside of the main footprint of the existing development significantly imposes on the amenities of neighbouring properties to the benefit only of the development.
- 7.4.13. **Visual impact** – The proposed extensions, by reason of their arrangement and location, will have an overbearing and oppressive visual impact on the north-facing windows to no.36 Harbour Lane and will have a similar impact on no.8 and 9 O'Connell Street Lower.
- 7.4.14. **Overlooking** – I do not consider there to be potential for significant or unacceptable overlooking or invasion of privacy surrounding property within the site's current context given the existing arrangement of fenestration within and outside the site and

the proposed level of the additional windows. The proposed fenestration and terraces will not overlook directly opposing windows or provide views into private open spaces of residential property in close proximity.

- 7.4.15. **Impact on development potential** – The appellant submits that the development potential of no.36 Harbour Court will be restricted by the proposed development. This includes by reason of the proposed location of fenestration within 1m of the north boundary of that site, which may have implications for fire safety in view of fire safety requirements (TGD Part B is referred to in observations to the application). It is generally not the position of the Board to consider building regulations in determining planning appeals as these matters are covered by a separate code.
- 7.4.16. It is possible that the proposed location of the extensions and the windows thereto may have implications for potential future development on the said neighbouring site, but there will always be contextual considerations and constraints for site developments, most especially on inner city sites and I do not consider that the proposed development significantly affects the development potential of the neighbouring corner site.
- 7.4.17. However, the development includes the provision of fenestration on the east elevation at 6<sup>th</sup> and 7<sup>th</sup> floor levels, within c.800mm of the boundary line with no.35 Abbey Street Lower. This may have implications for the potential development of the neighbouring property in a similar manner, although no observations have been received by the owner / occupier of that property.
- 7.4.18. Whilst this is a **NEW ISSUE**, the windows concerned do not appear to be essential as each of the bedrooms has fenestration on either the north, south or west (lightwell) elevations and I am satisfied that the issue can be resolved by condition without the need to further consult the parties concerned. Should the Board decide to grant permission a condition, requiring the offending fenestration to be omitted and replaced with appropriate design elements (e.g. indent or false shutters similar to those proposed elsewhere in the development) to be agreed with the planning authority, should be attached in the interest of the proper planning and sustainable development of this inner city location.
- 7.4.19. **Conclusion** – I consider the proposed location and arrangement of extensions to the hotel building will significantly and unnecessarily adversely affect the already

severely limited amenities neighbouring properties, no.36 Harbour Court and nos.8 and 9 O'Connell Street Lower.

## 7.5. Impact on Harbour Court street

- 7.5.1. Section 4.5.5 *Public Realm* of the City Development Plan includes a number of relevant policies to promote safe streets and encourage walking (Policy SC19), to promote high quality streets and public spaces which are accessible and inclusive, vibrant, attractive and safe (Policy SC20), and to promote the development of a built environment and public spaces which are designed to, inter alia, deter crime and anti-social behaviour (Policy SC21). Whilst the proposed development does not include any entrances or works to the public street, the principle of providing passive surveillance through active street edges and overlooking of streets and public space by windows in development is promoted in the *Design Manual for Urban Roads and Streets* (2013), as it is in many relevant planning guidance documents and is commonly recognised as the appropriate approach to the planning of streets and urban spaces for purposes of pedestrian and public safety.
- 7.5.2. Harbour Court, a public street providing access between Abbey Street Lower and Eden Quay via archways and an open access to Marlborough Street, appears as a severely neglected service lane. It is poorly overlooked in terms of passive surveillance from active windows at ground floor and above; and has poor interaction with the buildings along the street with access largely confined to service. It presents as significantly hostile to and unsafe for pedestrians and the public. The street environment appears most hostile immediately to the rear of the hotel site, exacerbated by overhead development including the existing open fire escape to the hotel and by the overpass between no.36 Harbour Court and no.8 O'Connell Street, which further darken the lane and obscure potential passive surveillance by those windows which have not already been blocked up. In addition, the accesses onto the street in this location are effectively fortified. There are suitable alternative pedestrian access routes around this block to enable pedestrians avoid this lane and, accordingly, footfall appears very low and it was evident to me from direct and indirect observations that the lane was in active use for anti-social behaviour.
- 7.5.3. The proposed two-storey roof extension would have a neutral to positive visual impact on the lane, but it effectively turns its back on the lane with almost no benefits

in terms of passive surveillance through appropriately located windows. Despite the southerly aspect and interesting city skyline, it is not an unexpected that the hotel business would avoid any direct views of the lane given its hostile condition, however it serves to exacerbate the negative street environment.

- 7.5.4. The proposed firefighting stairwell and associated access terraces erected to the rear would cover c.33-sq.m of the public street, extending the continuous covered area from the existing archway southwards by c.8.5m (4.5m in width for c.3.8m and c.2.7m in width for another 4.7m) and bringing it to within c.1.5m from the overpass to no.36 Harbour Court. This would have significant adverse impacts in terms of overshadowing of and loss of daylight to this already dark section of the street, creating additional severe overshadowing and loss of daylight in a tunnel-like effect. It would have a significant adverse impact on the street environment in terms of visual overbearing and tunnel effect lane.
- 7.5.5. The said stairwell and access terraces would entail a significant further reduction of passive surveillance of the street, although the access terraces may potentially create a sense of surveillance of the street, even if this access is limited to emergency only. No windows or glazing is proposed to the firefighting stairwell and the extent of the location of the stairwell and access terraces will obscure the view of the lane from all but 4no. hotel room windows.
- 7.5.6. The impact of the existing open fire escape is incomparable to that of the proposed emergency escape structure as the existing structure is far much more confined in extent and is an almost entirely open structure and does not obscure the windows of the hotel bedrooms. However, it still has a not-significant negative impact on the environment of the lane in terms of visual overbearing, overshadowing and obscuring passive surveillance. In addition, the proposed development provides for no access to Harbour Court, or other positive interaction, other than the existing fortified service entrance.
- 7.5.7. I would agree with the applicant cites the recently constructed VHI building on Abbey Street Lower is precedent for development extending above the existing roofscape in this sensitive area. The Board will note that the VHI development very positively addresses the service lane, Old Abbey Street (on the same access as Harbour Court), to the rear of the site, addressing it with an attractive, formal façade similar to

its main elevation to Abbey Street Lower. It also provides a high level of passive surveillance through active fenestration and includes a direct access onto the lane, being an access that does not appear as an obvious service access.

7.5.8. Taken together with the existing adjacent archway to Abbey Street Lower and the overpass to no.36 Harbour Court 1.5m to the south of the proposed stairwell, I consider the proposed development would have an excessive negative impact on the lane and would further aggravate the current hostile environment of this street, contrary to the proper planning and sustainable development of this street and contrary to the policies of the Dublin City Development Plan, to the Design Manual for Urban Roads and Streets and to other relevant design guidance.

7.5.9. The landbank to the rear of the hotel site is a stone's throw from O'Connell Street and is highly accessible. It is therefore an extremely valuable landbank resource. Relegating this lane and area to a service area, hostile to the general public cannot be in the interest of any of the properties along Harbour Court, including Wynn's Hotel, and cannot be in the interest of the sustainable planning and development of this valuable inner-city area. Notwithstanding that the proposal to extend and renovate the historic hotel is to be welcomed on a number of levels, there is no obvious way to resolve the serious adverse impacts arising on the street environment by way of condition as it will likely prove necessary to integrate the emergency access into the existing building footprint. I therefore consider it is necessary to refuse permission in this instance.

## 7.6. **Appropriate Assessment Screening**

7.6.1. The applicant submitted with the application a Screening Report for Appropriate Assessment and an Ecological Impact Assessment, both prepared by Scott Cawley. I note the detailed contents of same. The site is not located within a European site and therefore direct impacts on a European site may be ruled out. Within 10km there are four European sites to which the development site is connected via the River Liffey which would have potential to convey effects using the source-pathway-receptor model:

- South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.7km at the nearest distance (to NE);

- South Dublin Bay SAC Site 000210 c.3.8.0km at the nearest distance (to SE);
- North Bull Island SPA Site 004006 c.5.6km at nearest distance (to E-NE);
- and North Dublin Bay SAC Site 000206 c.5.6km at nearest distance (to E-NE);

7.6.2. Given the nature and extent of the proposed development on this brownfield site within the built-up area of Dublin's historic city centre, above and within the existing footprint of development on site, excepting the cantilevered extensions to the rear and above Harbour Court, which will entail no ground excavations during construction and which will discharge soiled water to the public wastewater system, I am satisfied that there is no potential for significant adverse effects on any European site in view of their conservation objectives.

7.6.3. Stage 1 screening conclusion – It is reasonable to conclude that on the basis of information on the file, which I consider to be adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European sites - South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.8km at the nearest distance (to NE); North Bull Island SPA Site 004006 c.5.7km at nearest distance (to E-NE); South Dublin Bay SAC Site 000210 c.3.8km at the nearest distance (to SE); North Dublin Bay SAC Site 000206 c.5.7km at nearest distance (to E-NE); and Poulaphouca Reservoir SPA site code 004063 c.24km (to SE) - and a Stage 2 Appropriate Assessment (and submission of a NIS) is not required.

## 8.0 Recommendation

8.1. I recommend that permission be refused for the reason(s) set out under section 9.0. below.

## 9.0 Reasons and Considerations

1. The proposed development, by reason of the location and arrangement of the proposed firefighting stairwell and access extending over the public street, would in itself and taken together with the existing adjacent archway to Abbey

Street Lower and the overpass to no.36 Harbour Court, seriously adversely affect the street environment of Harbour Court by way of tunnel affect, overshadowing and reduction in passive surveillance of the street, thereby further aggravating the current hostile environment of this street. The proposal is therefore contrary to policies SC19, SC20 and SC21 of the Dublin City Development Plan, to promote high quality streets and public spaces which are accessible and inclusive, vibrant, attractive and safe, to promote the development of a built environment and to provide public spaces which are designed to, inter alia, deter crime and anti-social behaviour. The proposal is also contrary to the principles and guidance for the development of urban streets under the *Design Manual for Urban Roads and Streets* (2013) which promote, inter alia, passive surveillance and active street frontage. The proposed development, by reason of the aforementioned significant adverse impacts on the street environment of Harbour Court, would militate against the potential future development of this valuable inner city landbank located adjacent to O'Connell Street and to two Luas lines, and would therefore be contrary to the proper planning and sustainable development of the city centre.

2. The proposed development, by reason of the horizontal location and arrangement of the proposed extensions relative to neighbouring buildings would seriously injure the amenities of those properties by way of loss of daylight and visual overbearing.

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John Desmond  
Senior Planning Inspector

29 March 2019