



An
Bord
Pleanála

Inspector's Report ABP-308317-20

Development	PROTECTED STRUCTURE: Change of use of the upper floors from residential and change of use of the commercial floorspace to boutique hotel consisting of an overall total of 23 bedrooms
Location	8, O'Connell Street Lower & No. 3 Harbour Court, Dublin 1
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	4329/19
Applicant(s)	Michael Kearns
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Mr Tony Cafolla and Ms Nina Cafolla
Observer	Transport Infrastructure Ireland
Date of Site Inspection	7 th January 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 297.5sq.m, consists of two linked properties, No.8 O' Connell Street Lower which is a protected structure (RPS Ref. No. 5995) located on the eastern side of the street, and No.3 Harbour Court which is located to the rear (east) of No.8 with access provided. The buildings are joined at their first-floor levels by an external elevated link corridor. The total floor area of both buildings for which this development is proposed amounts to 798sq.m. The immediate area comprises a strong mix of commercial, retail and residential uses, with the Luas red line running along Abbey Street Lower approx. 25m to the site's north.
- 1.2. No. 8 O' Connell Street Lower is a terraced two-bay five storey over basement commercial building, built in 1917 (following the destruction of the original building on site during the 1916 Easter Rising). The building has recessed two-tier bowed feature windows and a replacement shopfront on the ground floor, which is currently in use as an amusement arcade, along with the basement below. The ground floor unit and basement area are excluded from the development site area. The shopfront shares its lobby entrance (which is open to the street) with the entrance to the upper floor levels, to which this appeal relates. The two upper storeys (3rd and 4th floor) are comprised of a red brick and granite finish. A roller shutter separates the access to the retail unit and access to the stairs to the upper floors of the subject building. A small octagonal shaped kiosk, currently producing and selling donuts is located to the outside of the roller shutter doors, with a hatch facing out to O' Connell Street to allow service to customers.
- 1.3. No. 8 O' Connell Street Lower is connected at first floor level by an enclosed walkway to an ancillary building situated at No. 3 Harbour Court. The building at Harbour Court is a three-storey over basement brick-built property currently in poor condition, which is accessed primarily from Abbey Street Lower via an archway through the Wynn Hotel premises and a similar access archway off Eden Quay. Access is also available via Marlborough Street along Harbour Court which is the laneway which runs along the rear of No. 8 and those other buildings fronting onto O' Connell Street. Access to the building is achieved through the ground floor, with the main entrance behind a roller shutter door on the southern side of the building. The

building formerly functioned as an ice-cream factory and amusement hall and was owned and operated by the Cafolla family, who ran a chain of popular cafes and chip shops in Dublin.

- 1.4. No. 8 O'Connell Street Lower and the No. 3 Harbour Court lie wholly within the O'Connell Street Architectural Conservation Area (ACA) defined by the Dublin City Development Plan 2016-2022. No. 8 is also included in the National Inventory of Architectural Heritage (NIAH) where it is rated as being of regional importance due to its architectural and artistic qualities (NIAH No. 50010508).

2.0 Proposed Development

- 2.1. The proposed development is to comprise:

- Change of use of the upper floors within No. 8 O'Connell Street Lower from residential along with change of use of the existing commercial floorspace within No. 3 Harbour Court to provide for a boutique hotel consisting of an overall total of 23 number en-suite bedrooms on first, second, third and fourth floors of No. 8 O'Connell Street and works to the ground, first, second and third floor of No. 3 Harbour Court.
- The development will also include for provision of 1 no. 1 bed apartment at second floor level within No. 8 O'Connell Street Lower.
- Provision of main reception area and entrance to boutique hotel via No. 3 Harbour Court to serve both pedestrians and cyclists.
- Continued use of existing pedestrian entrance from No.8 O'Connell Street Lower to serve as both entrance to boutique hotel and to the 2nd floor apartment.
- Internal reconfiguration works to provide for the boutique hotel to include provision of a reception area, wc, kitchen and bicycle/storage area at the ground floor level of no. 3 Harbour Court.
- Associated signage to the exterior of no. 3 Harbour Court, link corridor and signage plate to front of No. 8 O'Connell Street.

- Change of finishes externally to existing link corridor between No. 8 O'Connell Street Lower & No. 3 Harbour Court.
- Upgrading of existing internal lift within No. 8 O'Connell Street Lower and installation of new lift as well as alterations to roof finishes and replacement of windows to No. 3 Harbour Court.
- Connection to existing site services and all associated and ancillary works.

2.2. The proposal is outlined in its detail within the drawings and documents accompanying the application including:

- Planning Statement by Genesis Planning Consultants.
- Architectural Heritage Impact Assessment (AHIA).

And the following additional details received at further information stage:

- Window Conservation Report by Brendan Hunter Joinery.
- Supplementary Information including a Conservation Method Statement in relation to No.3 Harbour Court prepared by John Cronin & Associates.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following receipt of further information, the Planning Authority decided to grant permission subject to 18 conditions, most of which are standard in nature, but also including the following of particular note:

- Condition 2. Development Contribution €7,509.60 in accordance with the S48 Development Contribution Scheme.
- Condition 3. Development contribution €5,945.10 in respect of Luas Cross City Line Supplementary S49 Development Contribution Scheme.
- Condition 4. Signage associated with proposed use to be subject of separate planning application.
- Condition 6. Bedrooms of building for use associated hotel only.

- Condition 7. Applicant to comply with requirements of Conservation Section of DCC.
- Condition 10. Notwithstanding the provisions of the Planning & Development Regulations 2001(As Amended), no advertisement signs... etc. shall be permitted without prior grant of planning permission.
- Condition 17. The roof top amenity space on top of No.8 O'Connell Street shall be solely used by the occupants of the self-contained residential unit.
- Condition 18. details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to and agreed in writing by the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planner's report (December 2019) requested 5 points of further information, these related to the following:

- Details required including visual impacts of proposed plant/equipment at roof level of No.8 O'Connell Street and No. 3 Harbour Court.
- Clarification as to proposals for use of private amenity space at roof level associated with the apartment in No.8 O'Connell Street.
- Details requested to address legal matters raised by third party submissions in relation to erection of signage on O'Connell Street façade and clarification that all works proposed are within the confines of the legal ownership of the property and not on any third-party landholdings.
- Details of elevational treatment of the first-floor pedestrian link bridge between No.8 O'Connell Street and No. 3 Harbour Court.
- Conservation matters to be addressed including:
 - (a) detailed window survey and method statements
 - (b) details of sensitively designed ensuites in no. 8 O'Connell Street

(c) revised drawings showing extant staircase retained and protection of architectural character of no. 3 Harbour Court as far as practicable

(d) photographic and drawn record of extant features and the building at No. 3 Harbour Court and how new work and repairs are to be carried out in a manner sensitive to the buildings conservation value.

A response to further information was received by the planning authority and the area planner considered the revised/additional details in their report dated September 2020. In summary the area planner noted the following:

- Additional 3-D roof plans were submitted which set out that all additional elements on roof would be located away from O'Connell Street front façade and would be no taller than the existing chimneys. Accordingly, based on the information submitted, it was considered that the works at roof level would not be visible from street level.
- The applicant states that the proposal represents a 'no change' scenario, in that the private amenity roof area will continue to be for the exclusive use of the occupants of the proposed apartment and for maintenance access to the water tanks and boiler only and will not be accessible to hotel occupants.
- The applicant's submission affirms that all proposed development will be located within the confines of the legal ownership of the property and not on out-side third party landholdings or basement level. The area planner references Section 5.13 of the Development Management Guidelines for Planning Authorities which states: *"The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts"*. The area planner considered that the applicant had sufficiently addressed this element of the requested additional information.
- The planning authority were satisfied that the proposed treatment of the pedestrian link bridge was satisfactory.
- As part of the FI response the applicant submitted revised floor plans highlighting how all en-suites are now proposed to be removed/separated from the existing wall fabric and that ceiling heights have been reduced in

order that the en-suite walls do not touch the existing ceiling fabric. In addition, reversible service boxes are now proposed in the ceiling voids in the existing floor structure in order to eliminate the need for any suspended ceilings. The conservation section of the planning authority still had concerns regarding the potential loss of clarity of the historic floor plan and that the architectural character of the spaces within the Protected Structure at no. 8 O Connell Street would remain compromised. A condition was therefore attached which required the applicant submit revised layouts for Bedroom 01, Bedroom 02, Bedroom 03, Bedroom 04, Bedroom 05, Bedroom 06 and Bedroom 07 of No. 8 O'Connell Street.

- In addition, concerns also remained with regard to the proposed removal of the historic staircase located in the building at No.3 Harbour Court. The applicant was therefore requested as part of condition no. 7 to submit a revised design which would show alternative design solutions which retain and reuse as much of the historic fabric of the extant staircase as possible, in a manner that would bring it as far as practicably possible in compliance with the building regulations.

3.2.2. Other Technical Reports

- Drainage Division – DCC – no objection subject to conditions.
- Transportation Planning Division – DCC – No objection subject to conditions.
- Conservation Officer – DCC – Two reports were received on the application.
 - The first dated 12th December 2019 recommended additional information as detailed under bullet point 5 of Section 3.2.1 Planning Report above.
 - The second dated 29th August 2020 detailed a review of the information received in response to the request for further information and noted the lack of sympathy to the conservation of the building in relation to the design of the proposed bedrooms 1 to 7 of No. 8 O' Connell Street and also recommended the applicant reuse as much of the historic fabric as possible in relation to the building materials at the No. 3 Harbour Court including the extant staircase. The Conservation Officer recommended that conditions in relation to the above and the appointee of a conservation

expert be attached, as well as other requirements in relation to the preservation of the building fabrics of both buildings.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland – response received dated 27th November 2019 – standard conditions in relation to protection of Luas line and Section 49 Supplementary Development Contribution Scheme.

3.4. Third Party Observations

3.4.1. Three third party observation were lodged in respect of the application. These were received from:

1. Nina Cafolla of No. 8 Lr O’Connell Street, Dublin 1;
2. Tony Cafolla, owner of Kiosk and basement of No. 8 Lr O’Connell Street, Dublin 1; and
3. Wynn’s Hotel Limited, 35-39 Abbey Street Lower, Dublin 1.

3.4.2. The following concerns were raised:

- Access via O’Connell Street entrance is not appropriate, steep stairs and roller shutter requires permission/control to open and close.
- No permission to use the ground floor front access space at No. 8 O’Connell Street which is not in the applicant’s ownership and not included in red line boundary.
- No consent given to erect signage by adjacent landowner.
- Traffic impacts of deliveries, waste and servicing arrangements on Harbour Court access lane.
- Lack of appropriate frontage onto O’Connell Street and Harbour Court.
- Accessibility constraints to hotel for people with disabilities due to layout and lift locations.
- Reinstatement of lift would entail works in the basement area which is not in the applicant’s ownership.

- Loss of residential units from existing building at no. 8 O'Connell Street is a concern given the current housing crisis.
- Harbour Court is a substandard service laneway, which is poorly lit and subject to anti-social behaviour, not suitable for new hotel entrance.
- Applicant does not address how security concerns will be addressed or how guests are to access property if security shutter fronting onto O'Connell Street is closed.

4.0 Planning History

On site:

- P.A. Ref. 4657/18 – 2019 – Permission refused for similar development to the current proposal, however with a greater number of bedrooms at 26. The reason for refusal as follows:

The proposed development would comprise a series of unsympathetic and inappropriate interventions, which would result in a significant loss of original historic fabric and seriously injure the legibility and layout of the historic internal plan forms in combination with a significant intensification of services. The proposal would therefore seriously injure the special architectural character and integrity of this significant Protected Structure and would contravene Section 11.1.5.1(a) (b) (c) of the Dublin City Council Development Plan 2016-2022.

5.0 Policy Context

5.1. National Guidance

5.1.1. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011)

Having regard to the presence of protected structures and Architectural Conservation Areas, on and adjacent to the site, the 'Architectural Heritage Protection, Guidelines for Planning Authorities' are considered relevant.

The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage.

5.1.2. **National Inventory of Architectural Heritage (NIAH)**

The existing building on the site at No. 8 O'Connell Street is a protected structure and is listed as regional importance on the NIAH under Reg. no. 50010508. The building was built as part of the reconstruction of the O'Connell Street area after the 1916 Rising. The bowed feature window and columns elevate the aesthetic value of the structure which forms part of a wider collection of early twentieth-century structures that now forms the character of O'Connell Street.

5.1.3. **Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (DoHPLG, Dec 2020)**

In particular the following standards and Specific Planning Policy Requirements (SPPR) are relevant:

- SPPR 3 – Minimum Apartment Floor Areas
- Sections 3.20 – 3.25 - Floor to Ceiling Height
- Sections 3.30 – 3.34 - Internal Storage
- Sections 3.35 – 3.39 – Private Amenity Space
- Appendix 1 – Required Minimum Floor Areas and Standards

5.2. **Development Plan**

5.2.1. The operative development plan is the Dublin City Development Plan 2016-2022 according to which the site area is subject to the zoning objective Z5 '*to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. Hotel is a permissible use within this zone. The following Chapters, Sections and Policies are relevant:

5.2.2. **Chapter 11:** This chapter sets out a detailed policy approach to managing the built heritage of Dublin City.

- 5.2.3. **Section 11.1.5.1** relates to protected structures and the relevant policy and guidance to be adhered to in carrying out works on such structures and within their curtilage.
- 5.2.4. Guidance and standards on works and additions, internally and externally, to protected structures are set out in **Section 11.1.5.3** which provides for minimal intervention to and maximisation of retention historic fabric and original planform, protection of proportions within buildings and relative to adjoining buildings.
- 5.2.5. **Section 11.1.5.4** - Architectural Conservation Areas and Conservation Areas
- 5.2.6. **Section 11.1.5.6** – Conservation Area – Policy Application states *‘In considering applications for change of use, the contribution of particular uses to the character of areas needs to be considered, the value that the local community places on particular buildings or uses is also important’*.
- 5.2.7. **Policy CHC2** seeks to ensure that the special interests of protected structures are protected, and that development will conserve and enhance protected structures and their curtilage.
- 5.2.8. **Policy CH4** seeks to protect the special interest and character of all Dublin’s Conservation Areas. 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.
- 5.2.9. The subject site is located within the O’Connell Street and Environs Architectural Conservation Area (ACA) designated in 2001. Being within an ACA of significance, the site is also within the Scheme of Special Planning Control for O’Connell Street and Environs 2016. In this scheme the land use policy seeks more intensive use of the upper floor and basement levels of buildings in the area while ensuring the protection of features of conservation importance.

Key objectives of the Scheme of Special Planning Control include:

- To protect and promote uses that contribute to the special interest or character of specific premises.
- To promote an appropriate mix and balance of uses.
- To seek more intensive use of upper floors and basement levels.

- To redress the decline in quality and presentation of buildings and shopfronts.
- Control advertisements structures and exhibition of advertisements.
- To secure the retention of historic fabric.

Policy CEE12 (i): seeks to promote and facilitate tourism ... and to support the provision of necessary significant increase in facilities such as hotels, aparthotels...

Policy CEE13 (iii) seeks to promote and support the development of additional tourism accommodation at appropriate locations throughout the City.

Policy QH18 seeks to promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartment...

Policy QH24 seeks to resist the loss of residential use on upper floors and actively support proposals that retain or bring upper floors above ground floor premises into residential use in order to revitalise the social and physical fabric of the city.....

Section 16.2.1 - Design Principles

Section 16.10 sets out the standards for residential accommodation and in particular **Section 16.10.1** set the **Residential Quality Standards** for apartments.

5.2.10. In addition to the above Sections, policies and guidance listed within the development plan the following documents of Dublin City Council are also of note:

- **O' Connell Street Architectural Conservation Area (2001)**
- **Scheme of Special Planning Control for O' Connell Street and Environs (2016)**

5.3. Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Mr Tony Cafolla and Ms Nina Cafolla, have submitted a joint submission appealing the decision of the planning authority to grant permission. The appellants had previously made submissions on the planning application and state the concerns previously raised have not been resolved. The grounds of appeal can be summarised as follows:

- Mr Cafolla states he is the owner of the ground floor and basement level at No. 8 O' Connell Street and also the kiosk which is located to the front of the building at street level. He also states he owns the basement level at No.3 Harbour Court.
- The location of the main entrance of the proposed hotel on Harbour Court is not suitable or appropriate. There are no footpaths along this alleyway, it is poorly lit and there are frequent anti-social incidents in the area.
- The proposed architectural treatment of the ground floor of No. 3 Harbour Court does not make any contribution to a visual upgrade of the laneway.
- The development is premature until such a time as Dublin City Council upgrade the laneway and make it safe for pedestrians and other users.
- The proposed entrance from O' Connell Street to the Hotel is substandard and even though the main entrance to the hotel will be at Harbour Court, due to the presence of the proposed brass nameplate and intercom it is expected that patrons will still use the O' Connell Street entrance.
- The entrance off O' Connell street is closed off from the public pavement with a metal gate which is closed by the appellants at night to secure their ground floor premises. Any situation where the gate must be maintained open for hotel guests or emergency egress will have a severe impact on the appellant's property's security. Furthermore, the Fire Officer will insist the gate is kept open for emergency egress from the hotel property.

- The applicants provided a letter claiming that they have a legal right to gain access to their property from the street but they propose to allow third parties use same who do not know how to operate the security gate.
- The Kiosk is also a hazard to safe egress from the hotel and a potential fire risk due to the cooking processes that occur in it.
- No consultation with the appellants has been carried out, or details as to who will be responsible for the roller shutter door onto O' Connell Street. The appellants have the right to close and lock the gate at any time without reference to the operation of the proposed hotel.
- In their decision to grant planning permission, Dublin City Council requested an extensive redesign of bedrooms under condition 7 (e). This illustrates that the planning department are still unhappy with the standard of design yet have decided to grant permission.

6.2. Applicant Response

6.2.1. The response by Genesis Planning Consultants on behalf of the applicant addresses the grounds of appeal as follows:

- In response to concerns regarding the standard of the alleyway at Harbour Court, the applicant highlights that no objection to the proposal was raised by the Transport Planning Division of DCC or the area planner. In addition, the reception/lobby at ground floor level on this laneway will be a positive addition to the area and increase permeability of this laneway in line with the framework document 'Re-imagining Dublin One'.
- The applicant refers to a recently permitted development nearby at 3 Eden Quay (P.A. Ref. 2477/19) which will also incorporate activation and increased patronage onto Harbour Court.
- Patrons of the hotel will access the site via foot or bicycle and the applicant does not see this additional use of the laneway leading to any issues or obstructing the use of the laneway for other users using vehicular mode or otherwise.

- The current proposal is supported by both national and local policy, in particular with reference to the zoning objective on site, which seeks to consolidate and facilitate the development of the central area.
- The applicant argues that the architectural treatment of the ground floor of No.3 Harbour Court seeks to achieve a balance between respecting the existing external façades and activation at street level for the reception/entrance lobby.
- In response to the appellants' concerns regarding the entrance onto O' Connell Street, the applicant states that this is an established entrance and currently serves the upper floors of No.8 O' Connell Street. Going forward this arrangement will continue and therefore represent a 'no change scenario' for pedestrian access.
- The main entrance for the purposes of access to the hotel element on site is via the entrance at Harbour Court and this is highlighted in the planning documents submitted with the application. The proposed hotel reception at No.3 Harbour Court will operate on a 24hr basis. Also, the provision of an intercom system for pedestrians seeking to gain entry via the O' Connell Street entrance will ensure internal security and appropriate management. A concierge desk at first floor level within No.8 O' Connell Street will also be in place to ensure smooth operation.
- With regard to legal matters associated with access to the property, the applicant states that they have submitted written consent from the owner of the property with the planning application, all in accordance with Article 22(2)(g) of the P&D Regs 2001 (as amended). In addition, a letter from Cullen Tyrell & O' Beirne Solicitors confirms that the owners of No. 8 O' Connell Street Lower & No. 3 Harbour Court have legal rights for erection of a signage plate and legal right to gain access from street level. The applicant highlights case law *McCallig V An Bord Pleanala* (2011) wherein the courts determined that legal matters raised regarding rights of access are not for the planning system to determine.
- The existing kiosk at the entrance to No. 8 O' Connell Street does not have the benefit of planning permission for sale of hot goods, therefore reference to

it as a possible fire hazard cannot be relied on. In addition, the applicant highlights that the assessment of fire hazards is not dealt with under planning legislation. The applicant states that this matter is also highlighted in Section 7.8 of the Development Management Guidelines.

- In response to the appellants' comments regarding condition no.7 of the decision notice which requires revised layouts for bedrooms 1-7 in No. 8 O'Connell Street, the applicant states that the planning authority were satisfied overall with the proposal apart from some suggested amendments which require agreement and that the appellants statement is incorrect and misleading.
- In respect of No.3 Harbour Court, the applicant states that it is their consider opinion that the requirements under conditions 7 (b) and 7 (e) are restrictive, not reasonable and onerous on the proposal. Specifically, the applicant highlights that the current staircase in place in No.3 Harbour Court does not meet the requirements of Part B Fire, Part K Stairs and Part M Access for the Disabled of the Building Regulations Technical Guidance document. The applicant refers the Board to comparable precedent under ABP Ref. 304881-19 which also related to a protected structure and the conditions attached therein.

6.3. Planning Authority Response

- The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

- Submission from Transport Infrastructure Ireland reiterates submissions made to the local authority indicating no objection subject to conditions.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having

inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development
- Design and Conservation Impact
- Access to Property
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The subject site is located within zoning objective Z5 which seeks '*to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. Hotel and residential uses are permissible within this zoning.

7.2.2. I note the planning history on site and the fact that a similar proposal for the redevelopment of the site was refused by the planning authority under P.A. Ref. 4657-18. The applicant states that careful consultation and discussions were held with the planning authority in order to address the previous reasons for refusal on site. The current proposal under consideration differs from that previously refused in the following ways: The number of bedrooms on site have been reduced from 26 no. bedrooms to 23 no. bedrooms and there has been a reduction in the internal intervention works required in order to minimise change to the internal configuration and internal alterations required to the protected structure at No. 8 O' Connell Street Lower. In addition, an Architectural Survey of No. 8 O' Connell Street Lower and No. 3 Harbour Court has been submitted with the current application

7.2.3. As originally proposed under the previous application, the current application also includes a 1-bedroom apartment, of 48s.qm in area, which is to be located on the second floor of No. 8 O' Connell Street Lower. This apartment is proposed in order to maintain a residential element also on site, one that is established through its current use. I note the proposed apartment meets the standards outlined under the current Sustainable Urban Housing, Design Standards for New Apartments (Dec 2020) and that private amenity space is proposed on the roof of the building at No. 8 O' Connell Street. Having examined the revised plans, including the 3D roof plan submitted as further information to the planning authority, I consider this acceptable. It is in my

opinion unfortunate that long term residential use has not been maintained on more of the floors, however I do note the prime location of the development site and its attractive location for such a tourism use as a hotel. In addition, the location of the development in such close proximity to sustainable transport modes such as Luas and bus services, as well as within close walking distances of tourism hotspots supports the development as a sustainably located hotel.

- 7.2.4. I consider that the proposed development can be viewed positively in the policy context and that the proposal is in accordance with the overall objectives of Z5 areas. On the basis of the above it is clear that the proposed development is acceptable in principle.

7.3. **Design and Conservation Impact**

No. 8' O Connell Street Lower – Protected Structure

- 7.3.1. The appellants state in their submission that the planning authority are unsatisfied with the standard of design proposed and that this is evidenced through the inclusion of condition no.7 on the notification of decision to grant permission. I note the comments of the DCC Conservation Officer which were made on receipt of further information on the planning application. The Conservation Office welcomed a new sustainable use for the buildings but criticises the standard of design proposed, in particular regarding the en-suites proposed to bedrooms no.1 to no.7 inclusive. The plans submitted in response to further information in my opinion do little to enhance the architectural character of the floors or retain features which would have contributed to the historic floor plan.
- 7.3.2. I note that the applicant proposes to move the en-suites between 100mm and 150mm back from the original walls of the protected structure and reduce the ceiling heights of the en-suite units to a height of no more than 2.4m in certain proposed bedrooms within the protected structure of No.8 O' Connell Street Lower, however it would appear these amendments are not proposed in all bedrooms within the structure. There is a discrepancy between the proposed Section drawings submitted (Drg no. PL-17-085-310) and the proposed Floor Plans for the 3rd floor to roof level (Drg no. PL-17-085-122). The floor plans of bedrooms no.7 and no.9 on the 4th floor show no indication of proposed amendments to the en-suites, yet the sections drawings do, in addition the numbering of the en-suite on the plan for the 4th floor

appears to be out by one number. The floor to ceiling height of all floors vary in height within the protected structure and in particular it is worth noting that those bedrooms proposed on the 4th floor have a reduced floor to ceiling height of 2.45m when compared to the floor to ceiling height of 2.7m on the 3rd floor, 3.15m on 2nd floor and 3.7m on 1st floor. Therefore a standard approach of en-suite ceiling height of 2.4m may not necessarily work in all cases and certainly will do little to enhance the architectural character of those bedrooms located on the 4th floor, which would see a limited gap of 100mm located between the roof of the en-suite and the ceiling of the main room (see Section D-D of Dwg. PL-17-085-122). I note the apartment located on the second floor provides a sufficient gap of 750mm between the roof of the wet room structure and the existing ceiling of the room, allowing the original character of the larger room on this level to be maintained and protected. While the plans submitted present some issues in relation to the integration of en-suites for those hotel rooms located within the protected structure, I do not believe these issues are insurmountable, and therefore would not justify any refusal of the proposal on this basis. If the Board are minded to grant the proposal, I would suggest that a condition is included similar to that proposed by the planning authority which would seek a revised proposal for these rooms and their respective en-suites to be agreed prior to commencement of development.

- 7.3.3. With regard to the other proposed works at No. 8 O'Connell Street, I would see these as a welcomed attempt to optimising the use of this protected structure. For example, the replacement of both aluminium and upvc windows to the front of No. 8 O'Connell Street with windows comprised of timber and a sash mechanism more akin to the original windows in place is welcomed.

Architectural Conservation Area and No. 3 Harbour Court

- 7.3.4. The subject site is located within the Architectural Conservation Area (ACA) of O'Connell Street and Environs 2001. Being an ACA of added significance, a Scheme of Special Planning Control also exists for the area of O'Connell Street and Environs (2016). Under Part 2 'maximising the use of buildings' this scheme seeks a more intensive use of the upper floor and basement levels of buildings in the area and to redress the decline in quality and presentation of buildings and shopfronts. The proposed development promotes an appropriate mix and balance of uses through the provision of both a boutique hotel and a residential apartment. While I note that

No. 3 Harbour Court is not a protected structure nor listed on the NIAH, it is located within the ACA and does represent a building of notable feature having being reconstructed around the same time as No.8 O' Connell Street Lower post the 1916 Easter Rising. Therefore, the structure is over 100 years old and as noted in the Architectural Heritage Impact Assessment Report has some features dating from this time, which remain in place. Policy CHC4 of the development plan states that *'Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of Conservation Areas and their settings'*. The proposed structure at Harbour Court is to host 14 hotel bedrooms over 3 storeys, (the Board should note there appears to be discrepancies in the numbering of the rooms within No. 3 Harbour Court, with a final reference of 26 bedrooms, however only 23 bedrooms can be accounted for as per the submitted description of development). The ground floor of no. 3 Harbour Court is to be comprised of the main reception, lounge area, kitchen and associated bicycle parking, toilets and store area for refuse. The existing link corridor will connect the second floor of this building with the rear of the second floor of the protected structure at No. 8 O' Connell Street Lower.

- 7.3.5. One of the key issues raised by the planning authority in relation to this element of the development was the loss of historic fabric proposed, in particular the extant staircase. I note the applicant's reference in their response to the appeal submission to condition no. 7 parts (b) and (e) which they believe to be restrictive, unreasonable and onerous. Part (e) of condition no. 7 refers to the requirement for revised layouts for the bedrooms in the protected structure and this has been addressed already under Section 7.3.2 above. Part (b) refers to the requirement to submit revised designs which detail the reuse in so far as possible of the historic fabric of the extant staircase in No. 3 Harbour Court. Policy CHC4 of the Development plan states that Development in an ACA will not *'Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, shop-fronts, doors, windows and other decorative detail'*. Further general guidance on *'Works to the Interiors of Non-Protected Structures'* is provided in Dublin City Council's *'Scheme of Special Planning Control for O' Connell Street and Environs (2016)'* in which No.3 Harbour Court is located. Under Part 4 'Built Fabric' the document states *'Interior joinery, fittings and decorative plasterwork should be retained or where appropriate,*

reinstated or restored following consultation with Dublin City Council'. It is noted that the Building Regulations 2014 Technical Guidance Document K which specifically references Stairways allows for some leeway regarding material alterations or changes of use of existing buildings with architectural or historical interest. While I note that certain necessary structural works may affect the stairway along the northern wall of the building ascending from ground to first floor and on to second floor, the submitted plans show that the location of the proposed central stairway corresponds closely with that of the original staircase in place on the second and third floors. I therefore consider that some compromise can be reached which would at least allow part of the original staircase on these floors to be retained or integrated into the design of the stairwell. Accordingly, if the Board are minded to grant permission, I would recommend the inclusion of a condition which outlines these stipulations, in order to focus the conservation efforts on the central staircase and reuse of the historic fabric where possible.

- 7.3.6. In addition to the above I note that the appellants have raised issue with the proposed architectural treatment of the ground floor at No. 3 Harbour Court, stating that it does not make any contribution to a visual upgrade of the laneway. The building which had a former use as a warehouse/factory is currently sitting unused. The applicants propose to replace the existing windows on the ground floor western elevation with new timber framed windows to match the existing, details of which have been provided in the submitted detailed window schedule. The existing roller shutter doors in place on the ground floor side (southern) elevation are to be replaced with a new entrance and partial glass façade and the existing brickwork on the remainder of the building is to be steam cleaned and repointed. A conservation method statement in relation to No.3 Harbour Court has been submitted as part of the further information received by the planning authority. This states under Chapter 4 that '*the contractor shall submit a cleaning methodology to avoid cleaning related problems*'. In order to ensure the proposed works on the building shall be carried out to best conservation practice, conservation specification and methodology for same will be required, this can be requested by way of condition. In conclusion I would consider the above interventions will make an overall positive contribution to an existing underutilised building and laneway.

7.4. Access

7.4.1. The appellants in their submission highlight concerns regarding the two proposed access/entrance points to the development. The main entrance to the proposed boutique hotel is to be provided off Harbour Court, which is an alleyway running to the rear of no. 8 O'Connell Street Lower. This alleyway links to Abbey Street Lower to the north and Eden Quay to the south, it also links to the Marlborough Street to the east.

Proposed Harbour Court entrance

7.4.2. The proposed development would lead to an increase footfall to the Harbour Court area, as patrons access the lobby and reception area. The appellants argue that the current alleyway is not up to safe standards, as no footpaths exist, and the laneway is poorly lit with frequent anti-social incidents.

7.4.3. I note that under a recent permission P.A. Ref. 2477/19 at No. 3 Eden Quay, further activation of the existing alleyway at Harbour Court is proposed. The main side access to the permitted guesthouse on the upper floors at No.3 Eden Quay is to be provided on the western ground floor off Harbour Court. This use will provide increased patronage onto the laneway also.

7.4.4. Having visited the site, I noted the main use of the laneway at present is for deliveries and use by service vehicles. The addition of the proposed hotel lobby at this location in my opinion would add to the vitality and vibrancy of the Harbour Court laneway in this central location so close to the main thoroughfare of O'Connell Street. The lack of footpaths along the laneway was not raised as an issue by the planning authority or the Transportation Planning Division of DCC. The laneway is 7m at its widest point but narrows to 5m under the archway access to Abbey Street Lower and 3m under the archway to Eden Quay. The narrowness of these archways necessitates significant reductions in vehicle speeds to allow access to the laneway, thus providing an in-situ traffic calming measures. I therefore do not believe that the lack of footpaths along this laneway will lead to any issues for pedestrian safety or access to the main hotel reception area.

7.4.5. The hotel also provides bicycle parking (10 spaces) on site in line with the requirements of Table 16.2 of the Dublin City Development Plan 2016-2022. Additional cyclists accessing this moderately trafficked laneway are not seen as an

issue, and it is my opinion that the added activation that will occur as a result of the use on the laneway, will result in a positive impact for the area, and will encourage an increase in use and permeability of the Harbour Court laneway.

O' Connell Street Lower entrance

- 7.4.6. An existing entrance/stairwell which provides access to the upper floors of No.8 O' Connell Street Lower is located on the ground floor to the front of the building. The applicant states, that given the reception area for the hotel is proposed off the Harbour Court entrance, they expect the majority of patrons to use that entrance, however, in any event the entrance into the building from O' Connell Street will be managed via an intercom system by the main reception area in the hotel. In addition to the entrance issues, a number of concerns were also raised within the submissions on the application in relation to legal consent for signage and works proposed outside the red line boundary of the site. In terms of the legal interest, I am satisfied that the applicants have provided sufficient evidence of their legal interest for the purposes of the planning application and appeal. While I note that arguments have been presented with regard to the operation of a roller shutter door, which may obstruct access to the proposed O' Connell Street entrance, any further consents or agreements that may have to be obtained are essentially a subsequent matter, and are outside the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act. Accordingly, it is noted that a person is not entitled solely by reason of a permission to carry out any development.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. I recommend that planning permission should be **granted**, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the Z5 zoning objective for the area, the provisions of the Dublin City Development Plan 2016-2022, the scale and nature of the proposed development partly within a protected structure at No. 8 O'Connell Street Lower and its location relative to surrounding properties within the O'Connell Street Architectural Conservation Area and to the pattern of development in the area, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the amenities of property in the vicinity, would not adversely affect the character or setting of the Protected Structure or of the Architectural Conservation Area in which it is located or any other protected structures in the vicinity and would be acceptable in terms of pedestrian and traffic safety. 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 plans and particulars submitted on the 11th day of August 2020, 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.

2. The proposed development shall be amended as follows:
 - a) In advance of works commencing on site, the applicant shall submit revised layouts for the following bedrooms, that shows a revision to the new floor plan and relocate the new en-suites in a more sympathetic manner than currently proposed in Bedroom 01, Bedroom 02, Bedroom 03, Bedroom 04, Bedroom 05, Bedroom 06, Bedroom 07, Bedroom 08 and Bedroom 09 of No. 8 O'Connell

Street Lower. Details of the above shall be agreed with the Planning Authority by written agreement in advance of works commencing.

b) Submit a revised designs which details reuse, insofar as possible of the historic fabric of the central staircase in No. 3 Harbour Court and to consider alterations to the extant staircase in a manner that would bring it, as far as practically possible in compliance with the requirements of the Building Regulations.

c) All historic windows in both No. 8 O'Connell Street and Harbour Court shall be repaired to a level that restores their original appearance. Where windows are clearly shown to be beyond repair, all proposed replacements must be historically correct timber sash windows, which are accurately based on originals found elsewhere in the building or elsewhere on the street. Details of the proposed new window frames, details and glazing (at a scale of 1:2) shall be submitted to the Planning Authority in advance of works commencing on site. The applicant shall employ a specialist joiner to complete the window refurbishment / replacement. Please note that in the case of historic windows, which retain historic glazing, new replacement windows will not be permitted. These shall be repaired.

d) The applicant shall provide a conservation specification and methodology for the proposed cleaning and repointing works to No. 3 Harbour Court and where proposed No.8 O' Connell Street Lower. This shall be to best conservation practice and shall be agreed with the Planning Authority by written agreement in advance of works commencing. In advance of any works commencing on site, the Conservation Officer shall be given the opportunity to inspect the façades of the building prior any cleaning or repointing works taking place, in order to identify any additional defects at close quarters, and to provide additional guidance in terms of the appropriate upgrade of the facades.

Reason: In the interests of protecting the integrity of historic fabric including a protected structure as well as the streetscape character in an Architectural Conservation Area and to protect visual amenity.

3. Other than for maintenance purposes, the roof top amenity space on top of No.8 O'Connell Street Lower shall be solely used by the occupants of the self-contained residential apartment unit.

Reason: In the interest of residential amenity.

4. Details, including samples, of the materials, colours and textures of all the external finishes to the buildings and the façade of the link bridge shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

The planning authority's conservation section shall be given an opportunity to inspect the site in the course of fabric removal and should any structural element of interest be found within the site these should be incorporated as part of the revised proposal.

Reason: To ensure an appropriate standard of development/conservation.

5. Prior to commencement of works, the developer shall make a record of the existing protected structure. This record shall include:

- (a) a full set of survey drawings to a scale of not less than [1:50] to include elevations, plans and sections of the structure, and

- (b) a detailed, labelled photographic survey of all internal rooms (including all important fixtures and fittings), the exterior and the curtilage of the building.

This record shall be submitted to the planning authority prior

to commencement of development and one copy of this record and a full set of drawings of the proposed works to the protected structure shall be submitted to the Irish Architectural Archive.

Reason: In order to establish a record of this protected structure.

- 6.

- (a) A qualified professional with specialised conservation expertise shall be employed to manage, monitor and implement the works on the site and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be designed to cause minimum interference to the retained building and facades structure and/or fabric.

(b) All repair works to the protected structure shall be carried out in accordance with best conservation practice as detailed in the application and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011. The repair works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, plasterwork (plain and decorative) and joinery and shall be designed to cause minimum interference to the building structure and/or fabric. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement.

(c) All existing original features, including interior and exterior fittings/features, joinery, plasterwork, features (including cornices and ceiling mouldings) staircases including balusters, handrail and skirting boards, shall be protected during the course of refurbishment.

Reason: To secure the authentic preservation of the protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

7.

a) Details of all proposed signage which shall include samples, of the materials, colours and textures of all the external signage to the proposed development including the signage/plaque to the front elevation of No. 8 O'Connell Street shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

b) No other signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, other than that approved on the submitted plans shall be erected within the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity and streetscape.

8. Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the Planning Authority.

Reason: In the interests of public health.

9. The proposed development shall be implemented in such a manner as to ensure no adverse impact on Luas operation and safety and shall comply with Transport Infrastructure Ireland's Code of Engineering Practice for works on, near or adjacent to the Luas light Rail System. Prior to the commencement of development, the developer shall consult with TII and submit to the planning authority details showing compliance with these requirements for written agreement including the following:

(i) Prior to the commencement of development, the developer shall obtain a permit from the Luas operator under the Light Railway (Regulation of Works) Bye Laws 2004 (SI No 101 of 2004) which regulates works occurring close to LRT infrastructure.

(ii) Programme for settlement and vibration monitoring programme during construction works,

(ii) Demolition and construction method statement, identifying all interfaces to the Luas alignment and risk assessment for work associated with the interfaces including mitigation measures.

(iii) Construction management plan and construction traffic management plan.

(iv) Lighting and public realm scheme in the context of the Luas light rail system.

Reason: In the interest of traffic safety and to ensure no adverse impact on Luas operation and safety.

10. No fans, louvres, ducts or other external plant other than those shown on the drawings hereby permitted shall be installed unless authorised by a prior grant of planning permission.

Reason: In the interest of visual amenity.

11. No additional development, other than that shown on the drawings hereby permitted shall take place above roof parapet level including air handling equipment, storage tanks, ducts or other external plant telecommunication aerials antennas or equipment unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

12. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 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 residential amenities of property in the vicinity.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) Location of the site and materials compound(s) including areas identified for the storage of construction refuse;

(b) Location of areas for construction site offices and staff facilities;

- (c) Details of site security fencing and hoardings;
- (d) Details of car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Provision of parking/vehicular access for existing properties during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

- 15.A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and recyclable materials and for the ongoing operation of these facilities shall be submitted to, and

agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment

16. 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.

17. The developer shall pay to the planning authority a financial contribution in respect of LUAS Cross City Scheme 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.

Máire Daly
Planning Inspector

15th January 2021