



An
Bord
Pleanála

Inspector's Report ABP310694-21

Development	Refurbishment and extension to existing building to include hotel, restaurant and roof bar.
Location	5-6 Meetinghouse Lane, Mary's Abbey, Dublin 7, D07 YP89.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3424/20.
Applicant	Development Ocht Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party -v- Condition.
Appellant	Development Ocht Limited.
Observers	None.
Date of Site Inspection	22 nd October 2021
Inspector	Paul Caprani.

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1.0 Introduction

- 1.1. ABP310694-21 relates to a first party appeal against a condition attached by Dublin City Council where planning permission was granted for the construction of a 9 storey overbasement hotel at Nos. 5-6 Meetinghouse Lane, Mary's Abbey, Dublin 7. Condition No. 5 requires that the proposed third floor shall be omitted in its entirety. Part (b) of this condition also required the omission of the south-eastern windows which directly adjoin third party lands at all levels. The decision of Dublin City Council was dated 3rd May, 2021. It is argued that the omission of No. 5 will allow the site to be put to optimal use and achieve compliance with the site's Z5 city centre land use zoning objective. Furthermore, it is stated that the applicant is in the ownership of adjacent properties to the east and south of the subject site and possesses a legal right to locate windows overlooking these properties.

2.0 Site Location and Description

- 2.1. The subject site is located in the centre of a rectangular inner-city block bounded to the north by Mary's Lane, to the east Capel Street, to the south Mary's Abbey and to the west by Arran Street in Dublin City Centre. It is located within the urban block to the east of the former City Fruit and Vegetable Market. It occupies an area of 0.056 hectares and is occupied by two existing interconnected two-storey buildings and an external courtyard at Nos. 5-6 Meetinghouse Lane. Access to the site is provided from Meetinghouse Lane. The larger, more westerly building on the site has direct access onto Meetinghouse Lane and comprises of a two-storey flat roof structure. Part of this building is used as an arts and stationary supply shop (Evans Arts Supplies). A smaller two-storey building with a hipped roof is located on the eastern portion of the site. Lands to the immediate south on Meetinghouse Lane accommodate a row of four 19th century stone clad former warehouses. It appears that these warehouses have been amalgamated to accommodate the ISI English Language School. This latter building is a protected structure. Lands to the immediate north of the site accommodate a series of warehouse buildings including a former bakery which have recently received a grant of planning permission under

ABP309470 for a separate hotel development rising to 8 storeys in height. The Board granted planning permission for the proposed development on the 17th June, 2021. The remaining areas surrounding the subject site comprise various of infill backland buildings ranging two to three storeys in height which typically rise to three to four storeys fronting the streets surrounding the perimeter block. The area generally has been undergoing regeneration. Planning permission has been granted for other hotel developments including a hotel development fronting onto Arran Street and an aparthotel fronting onto Little Mary Street as well as student accommodation and other mixed use developments. Many of these developments rise from 7 to 9 storeys in height. The Luas Red Line runs along Mary's Abbey to the south of the site.

- 2.2. The existing buildings on site have a stated floor area of c.647 square metres. Neither of the buildings to be altered or refurbished as a result of the proposed development are listed on the Record of Protected Structures.

3.0 Description of Proposed Development

- 3.1. Under the current application planning permission is sought for the following:
- The removal of the roof of the existing two-storey structures on site together with the removal of internal floors and walls. The extension of the building fronting onto Meetinghouse Lane to provide a 9 storey (including mezzanine) hotel development comprising of 65 bedrooms and a licensed restaurant. The proposal also involves the partial demolition of the western elevation fronting onto Meetinghouse Lane to provide new windows and entrances together with a canopy above the hotel entrance and associated signage. No works are proposed to the floorspace occupied by Evans Art Supplies at ground floor level.
 - The main entrance to the proposed development is to be taken off Meetinghouse Lane. The ground floor is to accommodate a small bar, café and reception area with lifts to the upper floors. The rear part of the building is to accommodate ancillary areas for staff as well as a kitchen. A pedestrian access is also provided along the northern boundary of the building near the rear and this links up with an existing right of way which will serve the hotel to

the north and links up to Capel Street. A mezzanine floor is also proposed above ground floor level which provides an office area and a number of bedrooms to the rear.

- The first to the eighth floor comprise almost exclusively of hotel bedrooms. The first floor also accommodates a meeting room. The first floor and the floors above extend in a southerly direction to occupy an area above Evans Art Supplies. The top floor accommodates a bar and restaurant area with extensive glazing providing views out over the surrounding area. The building as originally proposed incorporates a flat roof and rises to a height of 28.65 metres.
- The building is to incorporate large double floor windows on the front elevation serving the ground floor and mezzanine floor. The ground floor, mezzanine floor and first floor are to incorporate a stone cladded finish reflecting the nature of the adjoining buildings to the south. The upper floors are to accommodate a fibre cement cladding with large windows serving the hotel bedrooms. The upper floor restaurant is to incorporate a dark tinged glazing with a glass balcony surrounding the upper floor perimeter. Similar external finishes are proposed on the other elevations.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Dublin City Council issued notification to grant planning permission subject to 22 conditions. Condition No. 5 stated the following:

5. *The development shall be revised as follows:*

(a) The proposed third floor shall be omitted in its entirety.

(b) The omission of the proposed south-eastern windows which directly adjoin third party lands at all levels. The internal configuration which details the amalgamation of Rooms 108 and 109 at first floor level and 208 and 209 at second floor level. The internal configuration of Room 308 as shown on Drawing 0642_X_GA(03-06)01_XX, to provide the bedroom area with direct daylight access should also be submitted.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the planning authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: *In the interest of orderly development and visual amenity.*

4.2. Documentation Submitted with the Planning Application

4.2.1. The planning application was accompanied by the following documentation:

- A Planning Report prepared by John Spain and Associates which sets out details of the proposed development and assesses the proposal in the context of planning policy and the proper planning and sustainable development of the area.
- A Screening Report for Appropriate Assessment which concludes a finding of no significant effects on European sites in the vicinity.
- A series of photomontages which depict the visual impact of the proposed development by itself and in combination with other largescale developments including hotel developments in the immediate vicinity of the site. It provides details of the historic site analysis making reference to various cartographic evidence associated with the urban block. It provides a detailed compendium of photographs internally and externally of the site and details the overall design proposal.
- An Engineering Service Report detailing surface water, foul drainage, flood risk and water supply arrangements to serve the development.
- A Construction and Demolition Management Plan providing details of demolition of waste management procedures together with an outline waste audit procedure. The report also provides details of construction traffic and site access arrangements, site logistics, air quality and noise vibration controls.
- A separate Preliminary Construction/Traffic Management Plan providing similar type information regarding the management of construction procedures and traffic impact.

- An Operational Waste Management Plan was also submitted which gives details of the estimated waste arisings during the operational phase and waste storage and collection procedures.
- An Architectural Heritage Impact Assessment provides an assessment of the existing buildings. It is stated that the impact of the development on views from rear facing windows in the buildings surrounding the site is likely to range from moderate to significant. It is considered that the impact of the proposed development from views of the Capel Street Architectural Conservation Area may be significant but very restrictive.
- A Separate Sustainability Report provides details of the energy rating system and energy performance of the building.
- A Traffic and Transport Assessment and Preliminary Mobility Management Plan is also submitted. No car parking spaces are proposed as part of the hotel development, and it is noted that the hotel is located within the heart of the city and is served by excellent public transport infrastructure. The mobility management plan seeks to provide a travel plan co-ordinator.
- A desk based Archaeological Impact Assessment makes a number of recommendations with regard to archaeological testing, site clearance monitoring and demolition and site investigation monitoring.
- A Daylight and Sunlight Assessment assesses the available daylight to selected windows and adjacent residential properties. In relation to habitable rooms, it is noted that most windows tested meet the criteria of 27% VSC under the BRE Guidelines. While there are a number of windows with a VSC below 27% under a do-nothing scenario these windows retain a VSC in excess of 0.8 times their former value. Only a single window at No. 139 Capel Street will receive a minor adverse impact (0.76 times its former value). It is concluded given the inner-city nature of the site, the proposed development overall meets the specifications of the BRE standards. In terms of overshadowing, it is noted that as the building is slim in profile the shadow will move along the terrace of adjoining buildings and no window will be unduly overshadowed. Any amenity space will retain in excess of 0.8 times its former value. Shadow casting diagrams are contained in Appendix A of the report.

4.2.2. Finally, an assessment of the visual impact on the built environment was also submitted. It assesses various views from vantage points in the vicinity of the site and the impact is likely to range from moderate to significant depending on the proximity of the structure to the proposal.

4.3. **Planning Authority's Assessment of the Proposal**

4.3.1. Observations

A report from TII recommends a number of conditions be attached to any grant of planning permission including a financial contribution condition under Section 49 of the Contribution Scheme.

A report from An Taisce notes that the subject site is located in a sensitive location in terms of architectural conservation areas, protected structures and archaeology. It is suggested that the overall design be revised to reflect this.

An observation from K&N Evans Trading Limited (Arts Supplies) raises a number of queries in relation to construction traffic and possible disruption to the observer's business during the construction phase.

A report from the Transportation Planning Division of Dublin City Council assesses the proposal and concludes that there is no objection to the proposal subject to conditions.

A report from the City Archaeologist states that there is no objection subject to a detailed condition in respect of archaeological monitoring.

Additional Information Request

The initial planner's report considered the proposed development to be acceptable in principle. However, there are serious concerns with regard to the design, scale and massing of the proposed development and its potential impact on the adjoining Capel Street ACA. In this regard further information is requested whereby the applicant is requested to:

- Consider the reduction of the overall height of the development to be more sympathetic to the surrounding streets.

- The applicant is also requested to give consideration to the overall design and profile of the rooftop element to provide a more refined and symmetrical design.
- The applicant is requested to provide a revised approach to the articulation and modulation of the north-west façade which currently would present a large blank appearance.
- It appears that the proposed development seeks planning permission for the positioning of a number of windows onto the shared boundary with lands which are not in the applicant's ownership. The applicant is requested to provide a revised design which would address these concerns.

On 8th April, 2021 Dublin City Council granted an extension of time for the submission of additional information on foot of a request from John Spain and Associates on behalf of the applicants dated 6th April, 2021.

Further information Submission

Further information was submitted on 7th May, 2021.

- In response to Item 1 the overall height of the proposed development has been reduced by c.2.5 metres in order to relate more sympathetically to the surrounding streets. The overall height of the building has been reduced from 31.1 metres to 28.6 metres. The Board will note that the number of floors remain the same at 9.
- The design of the rooftop has also been amended to provide a more symmetrical appearance with the implementation of a glazed upper deck setback which it is argued reduces its massing and visual appearance.
- The north-west façade incorporates a number of false recessed windows to give articulation to the elevation in order to reflect the rhythm of the other facades.
- A series of photomontages are submitted depicting the original and revised scheme as viewed from the Capel Street area ACA. Photomontages are also submitted depicting the original and revised scheme from the junction of St. Michan's Street and Chancery Street to the west of the site.

- In relation to Item 2, it is stated that the applicant has undertaken a review of the windows on the northern and eastern elevations and made revisions as appropriate to omit them. The amendments to the placement of windows on the eastern and northern elevations ensure that these are positioned on boundaries under the ownership of the applicant and do not encroach upon lands in separate ownership. It should be noted that the airspace above Evans Art Supplies premises is under the ownership of the applicant.

4.3.2. Further Report prepared by the Planning Authority

It notes that the impact of the proposed development on the Capel Street Architectural Conservation Area is considered to represent a significant improvement in the overall design particularly with regard to the reduction in height. Furthermore, the remodelling of the uppermost floor has also improved the visual design. Notwithstanding the above conclusions, it is considered that the proposed development continues to represent a significant and negative impact when viewed from the Capel Street Conservation Area and this has not been sufficiently addressed through the revised design. Accordingly, it is recommended that a condition be imposed requiring the omission of a storey so as to reduce the potential visual impact.

It is considered that the proposed design alterations to the north-west façade has successfully introduced an element of visual interest which is deemed to be acceptable.

With regard to the alterations and fenestration to ensure that third party lands are not overlooked, it is considered that the revisions proposed are not considered acceptable. While it is noted that the applicant has made reference to acquiring the airspace of the adjoining property, limited information has been provided to support this assertion. It is considered that the granting of permission for the positioning of windows onto the shared third-party boundaries is unacceptable as this may impact on the development potential of neighbouring property. It is therefore recommended that should planning permission be granted, a condition is included to amalgamate the rooms on the south-eastern corner of the site and omit the windows which adjoin the neighbouring property.

It is on the above basis that Condition No. 5 was incorporated into the Planning Authority's grant of permission.

5.0 Planning History

- 5.1. Under Reg. Ref. 2944/01 planning permission was granted for a change of use from a warehouse to an office use on the subject site together with the erection of an additional floor to the rear of the building.
- 5.2. The Board will also note that there are a number of relevant applications in the immediate vicinity of the subject site.
- 5.3. On lands to the immediate north of the site planning permission was granted by An Bord Pleanála in June, 2021 under Reg Ref 309470 for the construction of a 98 bedroom hotel ranging from 1 to 8 storeys in height with access off Capel Street, Meetinghouse Lane and Little Mary Street.
- 5.4. On the same site to the north An Bord Pleanála under PL29N.305177 refused planning permission for a similar type hotel development which was reduced to three storeys in height by the Planning Authority. The Board refused planning permission on the basis on the need to increase the height, scale and massing of development in this area.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a first party appeal specifically in relation to Condition No. 5.
- 6.2. It is argued that the Planning Authority's concerns in relation to height and overlooking of third-party lands were appropriately addressed in the applicant's response to the additional information request. It is stated that the proposal is visually consistent with the heights of granted developments permitted under An Bord Pleanála on adjoining sites (ABP309470) and to the north of the food market under (ABP307493) a 278 bedroom hotel (5 to 8 storeys) at Arran Street East on contiguous lands to the west of the site. It is noted that the hotel development granted by the Board to the immediate north of the site (Boland's Bakery) will have a very similar visual impact to that proposed under the current application.

- 6.3. In relation to overlooking of third party lands a letter prepared by Byrne Wallace Solicitors confirms the applicant's ownership of adjoining property. The letter attached to Appendix 3 confirms the applicant's ownership of the building to the rear of the subject site and control of the airspace above this property it is therefore considered that the amalgamation of rooms referred to in the condition is unnecessary have regard to the applicant's ownership of the adjoining buildings.
- 6.4. The grounds of appeal go on to set out details of the site location and description and the relevant planning history relating to the subject site and the surrounding development. Section 4 of the grounds of appeal details the proposed development. Section 5 sets out the planning policy context both nationally and locally whilst section 7 of the report specifically details the grounds of appeal.
- 6.5. With regard to building height, it is stated that the development at 28.65 metres marginally exceeds the 28 metres limit in the development plan. However, the proposal is appropriate in the context of the development plan's criteria for higher buildings (site's central location, accessibility and proximity to public transport and the general regeneration of the area). The grounds of appeal go onto detail the justification for the proposed building height on the basis of various criteria and its city centre location. It is argued that the proposed development represents a graduated increase in height from three to four storey at the perimeter block towards eight and nine storeys at the centre of the block. The proposal will contribute positively to the design of the streetscape and will secure the redevelopment of an underutilised brownfield site. A visual impact assessment prepared by ARC Consulting accompany the planning application and the response to additional information. It is argued that the proposal will be less impactful on the visual impact than the original proposal. The appeal goes on to set out how the proposed development responds at the scale of a district/neighbourhood/street context. It is argued that the proposal makes a very positive contribution to the urban neighbourhood and streetscape and incorporates a visually interesting external finish. The design concept has been informed by detailed and comprehensive studies undertaken in the Architectural Design and Access Statement as well as the Heritage Impact Statement submitted with the application.
- 6.6. The grounds of appeal make reference to the various other reports and studies that were submitted with the application. The development successfully utilises the site's

location at a central position within the city block to minimise the potential impact on development patterns in the area. The slim nature of the building also reduces the visual impact. The response details the further information request by the Planning Authority and the applicant's response to it. It is noted that the Planning Authority's further information request did not specifically request the omission of any floors but rather requested the applicant to give consideration to the reduction of the overall height. The submission goes on to set out verified views, which it is argued demonstrates the negligible visual impact arising from the proposed development while viewed from vantage points in the vicinity of the Capel Street ACA. Reference is made to the Board's decision under ABP309470 (hotel development to the immediate north at Boland's Bakery) and the fact that the inspector concluded that the height and scale of the building would not be readily discernible from vantage points along the Capel Street ACA and that the Board appear to accept this conclusion in granting planning permission for the proposed development. It is contended that the proposed development is of a similar size and scale to that on the adjacent site granted by An Bord Pleanála.

- 6.7. Reference is also made to a similar development under ABP305470-19 at Moore Lane, Dublin 1. This scheme extended to a parapet height of 32.7 metres and the Board grant planning permission for this development in accordance with the inspector's recommendations. Reference is also made to ABP309265 which relates to a development on Sir John Rogerson's Quay where again a reduction in the height of the proposal by the Planning Authority (to eight storeys) was the subject of a first party appeal where the Board supporting the inspector's recommendation and granted planning permission for the reinstatement of the floor. Finally, it is argued that the reinstatement of the floor in the case of the current application and appeal is vital for the commercial viability of the scheme.
- 6.8. It is also stated that the amalgamation of the bedrooms required by Condition No. 5 would result in a reduction of 12 rooms and this would also call into question the operational viability of the hotel.
- 6.9. In relation to Condition 5(b) it is stated that the lands to the south-east of the application site is currently under the ownership of the applicant and leased through Evans Arts Supplies on a 999 year term. It is noted that the leaseholder has not right or ability under the terms of the lease to develop the neighbouring property hence

there is no development potential to be impacted. On this basis it is considered that the omission of the windows required by Condition No. 5(b) is unnecessary owing to the applicant's ownership of the adjoining property. On this basis it is respectfully submitted that Condition No. 5(b) is omitted from the final grant of planning permission.

7.0 Appeal Responses

Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Planning Policy Context

The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The site is governed by the zoning objective Z5 the objective of which is to “*consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity*”. Hotel use is a permitted use under this Z5 zoning objective.

Chapter 6 of the development plan relates to city economy and enterprise. Policy CEE12 seeks to promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels and aparthotels, tourist hostels, cafes and restaurants, visitor attractions including those for children.

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

Policy CEE15 seeks to promote and facilitate the transformation of regeneration areas, specifically inner-city areas, as a key policy priority and opportunity to improve the attractiveness and competitiveness of the city, including by promoting high quality private and public investment and by seeking European Union funding to support regeneration initiatives to the benefit of residents, employees and visitors.

Policy CEE22 seeks to promote and facilitate the crucial economic and employment potential of regeneration areas such as Dublin 1, 7 and 8.

In terms of Building heights, the development plan permits heights of up to 28m for commercial buildings in the inner city. The assessment criteria for higher buildings is set out below:

- Relationship to context, including topography, built form, and skyline having regard to the need to protect important views, landmarks, prospects and vistas.
- Effect on the historic environment at a city-wide and local level.
- Relationship to transport infrastructure, particularly public transport provision.
- Architectural excellence of a building which is of slender proportions, whereby a slenderness ratio of 3:1 or more should be aimed for.
- Contribution to public spaces and facilities, including the mix of uses.
- Effect on the local environment, including micro-climate and general amenity considerations.
- Contribution to permeability and legibility of the site and wider area
- Sufficient accompanying material to enable a proper assessment, including urban design study/masterplan, a 360 degree view analysis, shadow impact assessment, wind impact analysis, details of signage, branding and lighting, and relative height studies.
- Adoption of best practice guidance related to the sustainable design and construction of tall buildings.
- Evaluation of providing a similar level of density in an alternative urban form.

8.1. **The National Planning Framework.**

- 8.1.1. This document places strong emphasis on the use of urban land to accommodate development at higher density in order to make better use of underutilised land including infill and brownfield which are serviced by existing facilities and public transport. Compact development seeks to reuse previously developed brownfield land and building up infill sites at appropriate densities to ensure the efficient use of existing social and physical infrastructure.

8.2. The Urban Development and Building Height Guidelines

8.2.1. This guidance document introduces a more flexible approach to building heights in urban locations. Policy SPPR1 states that in accordance with government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores, Planning Authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and the Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building heights.

8.3. Capel Street and Environs Architectural Conservation Area

8.3.1. This document was adopted in 2009. Part 1 of this document sets out the background and case for the architectural conservation area. Part 2 of the document sets out the policies and objectives.

8.3.2. It is the overall policy of Dublin City Council to protect and conserve the character and setting of the ACA. In terms of views and prospects the clear view of City Hall, Capel Street contributes to the character of the street. It is the objective of the ACA to protect the special view from encroaching development.

8.3.3. In accordance with policies in the development plan it is the policy of Dublin City Council to protect the curtilage of protected structures or proposed protected structures from any works which would cause loss or damage to the special character of the protected structure. Section 8.2.8 states that new development should have regard to the grain and character of adjacent buildings, which shall include height, massing, proportions and plot width.

9.0 EIAR Screening Assessment

9.1. The relevant classes for considerations in relation to EIA Screening is Class 10(b)(iv) “urban development which will involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of the built-up area and 20 hectares elsewhere”. The site is located in a predominantly commercial area and

business district and therefore the relevant threshold would be 2 hectares as opposed to 10 hectares. The area of the site in question is 0.0556 hectares and therefore a mere 2.7% of the threshold which would warrant the provision of an environmental impact assessment report. Therefore, having regard to the modest size of the site together with the nature and scale of the development and the location of the development on an urban brownfield site and the characteristics and likely duration of the potential impacts, I consider that the proposed development is not likely to have significant effects on the environment and therefore the submission of an environmental impact statement is not required.

9.2. **Natural Heritage Designations**

9.2.1. The site is not located within or contiguous to any Natura 2000 sites in the vicinity. The nearest Natura 2000 sites are as follows:

- The South Dublin Bay SAC (Site Code: 000210) is located approximately 3 kilometres to the south-east of the site.
- The South Dublin Bay and River Tolka SPA (Site Code: 004024) is also located approximately 3 kilometres to the south of the site.
- The North Bull Island SPA (Site Code: 004006) and the North Bull Island Special Area of Conservation (Site Code: 000206) is located approximately 6.3 kilometres to the north-east of the subject site.

10.0 **Planning Assessment**

10.1. I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the planning authority's decision and the fact that no third party appeals, or observations were submitted objecting to the proposed development. I consider the principle of development on the subject site having regard to the zoning provision to be acceptable. It would also have regard to precedent decisions in the immediate area which suggests that the principle of hotel development in this area is acceptable. On this basis I consider that a review of the application de novo is not required and that An Bord Pleanála can restrict its deliberations solely to the issues raised in the grounds of appeal namely the

appropriateness of applying Condition No. 5 in any grant of planning permission. This issue is therefore explored and assessed below.

10.2. **Omitting the Third Floor of the Development**

- 10.2.1. Condition No. 5(a) requires that the proposed third floor of the hotel development shall be omitted in its entirety. This floor, like the floors above it with the exception of the top floor, comprises exclusively of hotel bedrooms, 11 hotel bedrooms in all. The planner's report in respect of the additional information submitted, notes that the revisions would reduce the overall scale of the building by 2.5 metres considered the revisions to represent a significant improvement in overall design. In particular "it is considered that the proposed reduction in height..... has reduced the potential for visual impact when viewed from the west and the south". That being said, the planner's report goes on to note that "it is considered that the proposed development continues to represent a significant and negative impact when viewed from the Capel Street Conservation Area which has not been sufficiently addressed through the revised design.
- 10.2.2. The applicant in the grounds of appeal, argues that the original scheme has already been reduced by 2.5 metres and various photomontages prepared and submitted as part of the additional information to the Planning Authority, demonstrate that the proposed development will be entirely appropriate in the surrounding context and will reflect the prevailing character of the area. Furthermore, it is considered that the proposal will not be readily visible from public vantage points in and around the subject site.
- 10.2.3. In evaluating this matter, I would consider that the proposal needs to be assessed in the context of the evolving nature of the wider area in general and the urban block in which the site is located in particular. The zoning pertaining to the site seeks to consolidate and facilitate development in the central area of the city and to reinforce and strengthen and protect its civic design. The strategy for the Z5 land use zoning objectives seeks to provide 'a dynamic mix of uses which interact with each other which will sustain the vitality of the inner city both by day and by night'. It is my considered opinion that a more intensive mixed-use development on the subject site will help reinforce and reinvigorate the central area of the city. In order to achieve this land use zoning objective intensive mixed-use developments at a high density

would be compatible with this objective. The need to support and sustain city life with a higher quantum of development, subject of course to qualitative safeguards, would comply with the land use zoning objective in my opinion. The retention of the additional storey would therefore in principle support the land use zoning objective.

10.2.4. Furthermore, the proposed 9 storey development should not be seen in isolation. As referred to above there have been a number of developments granted in the wider area including a large hotel development to the immediate north of the site 8 storeys in height, a five to eight storey hotel development to the immediate north and west of the site at Little Mary Street and Arran Street East and the provision of an aparthotel and student accommodation in the wider vicinity of the site. All of these developments incorporate building heights substantially higher than the historic prevailing height within the area. These newer developments represent a significant departure from the predominantly two to four storey character of the area. The wider area therefore is undergoing a transition where sites are being redeveloped at more sustainable densities in line with the provisions of the National Planning Framework in providing more compact development at higher densities particularly in the city centre close to high frequency public transport. As mentioned earlier in my report, the Luas Red Line runs to the immediate south of the site. Furthermore, the Dublin City Development Plan includes numerous policies which seek to promote and facilitate tourism as one of the key economic pillars of the city's economy in order to become a major generator of employment within the city. Dublin City Council seeks to support the provision of tourism infrastructure including hotels and the aparthotels in the area.

10.2.5. With regard to the specific impact of the proposed development on the Capel Street Architectural Conservation Area it is fully acknowledged that Capel Street is an important and historic thoroughfare within the city providing a spectacular terminal vista southwards over the River Liffey through Parliament Street and centring on City Hall. The street possesses many fine examples of high quality 18th century and 19th century architecture. In evaluating any potential impact on the historic streetscape, it is imperative that the integrity of the streetscape and the built environment is maintained in the redevelopment of any sites in the vicinity.

10.2.6. With this in mind, a relevant consideration is the fact that the Board have already granted a hotel development with an 8th storey element on a contiguous site to the

north. Therefore, a precedent for a building in excess of the prevailing scale and character of the area has the benefit of planning permission. Likewise, albeit to a lesser extent, the grant of planning permission for a five to eight storey hotel on Arran Street and larger six and seven storey redevelopments in the wider area sets a relevant precedent for buildings of this scale. This in my view is a material consideration in adjudicating on whether or not the proposed development would be acceptable from a visual point of view from vantage points along Capel Street. Furthermore, as in the case of the grant of planning permission of the hotel to the north, the 9 storey hotel is centrally located within the block and is therefore setback from any street frontage. As in the case of the 8 storey hotel development which has the benefit of planning permission, it will not be readily visible from vantage points along Capel Street as it will be screened behind the existing buildings fronting onto the street. This is aptly illustrated in Figure 5 of Page 26 of the Grounds of Appeal. It is my considered opinion therefore that only intermittent and somewhat truncated views of the proposed development will be seen from particular vantage points along Capel Street. I would submit that the 9 storey element of the proposed hotel will not be readily visible from vantage points along most of the street particularly the western side of the street. As in the case of the planning application already granted by An Bord Pleanála, it is considered that the higher element of the building is appropriately tucked behind the buildings which front onto Capel Street, Little Mary Street and Mary's Abbey. While views of the proposed building will be more evident from vantage points along streets to the west specifically Chancery Street, Mary's Lane, George's Hill etc. as aptly illustrated in Figure 6 of the grounds of appeal (Page 27), any view of the building from this location should be seen in the context of grants of planning permission for buildings of similar sizes and scale in the immediate vicinity. Furthermore, it should be noted that these views are outside the Capel Street and Environs Architectural Conservation Area and therefore do not appear to be a significant concern from the Planning Authority's perspective.

10.2.7. Finally, in relation to the issue of building height, I would refer the Board to its previous decision in respect of ABP305177-18 which related to the site to the immediate north. This application related to a previously proposed hotel development to the immediate north. Under this application the size and scale of the development was reduced from 8 storeys to 3 storeys in height and the development

was subject to an appeal to An Bord Pleanála. An Bord Pleanála refused planning permission for the original hotel on the site on the basis that the Board considered inter alia that *“the revised proposal would not constitute an adequate response to the context and opportunity of this urban site and therefore would not be in accordance with the proper planning and sustainable development of the area. This infers that the Board in deliberating on any application within this perimeter block would be favourable to the idea of developing sites at greater heights and densities. In coming to its conclusion to refuse planning permission for the original hotel development on the site to the north the Board had particular regard to the Urban Development and Building Height Guidelines for Planning Authorities and the increased height, scale and massing of development of recently permitted and constructed buildings in the area.”* This suggests that the Board consider that the location on which the subject site is situated offers an opportunity to develop at higher and more sustainable densities than that proposed under the original application for a hotel development on the site to the north.

10.2.8. I consider the revised design submitted by way of additional information constitutes a significant improvement over that originally proposed and I consider the revised design to be appropriate in terms of scale and height particularly in the context of the evolving rejuvenation of the area where relevant precedents exist in relation to density and height. I do not consider the omission of a floor in this instance to be necessary in this context and I further consider that any further reduction in the height of the building would have no material beneficial impact in terms of improving the visual amenities of the area. On this basis I consider that the Board should omit Condition 5(a).

10.3. **Condition 5(b)**

10.3.1. This condition requires the omission of the proposed south-eastern windows which according to the condition, directly adjoin third party lands at all levels. The condition also requires the internal configuration, which details the amalgamations of Rooms 108 and 109 at first floor level and 208 and 209 at second floor level. The internal configuration of Room 308 as shown on the drawings submitted to provide the bedroom area with direct daylight access should also be submitted.

- 10.3.2. Appendix 3 of the grounds of appeal contain a letter from Byrne Wallace law firm which indicates that the applicant holds the unregistered freehold title to lands outlined in red indicated on the site location plan. The drawings indicate that the applicant appears to have the freehold over the lands to the south of the site (incorporating the ISI English Language School).
- 10.3.3. I consider the condition as worded is somewhat ambiguous in that the windows serving the upper floors of the hotel face predominantly in a southwards direction and an eastwards direction. There are no windows facing in a south-easterly direction. I consider the fenestration arrangements on the south facing windows (Rooms 05, 11, 10, 9 and 8) face in a southerly direction and therefore over the buildings which the applicant appears to have freehold status over. I am satisfied therefore that any buildings on this elevation are acceptable and are not required to be altered. With regard to the windows on the east elevation (serving Rooms 308, 307 and 306) these windows face eastwards onto the rear elevations of buildings fronting directly onto Capel Street. The separation distance between the proposed windows serving the hotel development and the upper floor windows of the building on Capel Street is in the order of approximately 16 to 18 metres. This in my view is sufficient. Furthermore, I do not consider that the orientation of the windows as proposed will materially affect the development potential of the backlands to the rear of buildings fronting onto Capel Street to the south-east of the subject site.
- 10.3.4. On the basis of the above therefore I recommend that Condition No. 5 in its entirety be omitted.

11.0 **Appropriate Assessment**

Having regard to the nature of the first party appeal which specifically relates to the omission of a floor and the alterations to fenestration arrangements it is not considered that the alterations sought under the current application would have any material impact on Natura 2000 sites. I am further satisfied from the appropriate assessment screening report submitted with the application and the Planning Authority's Appropriate Assessment Screening together with the nature of the development in an urban area and the separation distance between the subject site and surrounding Natura 2000 sites that no appropriate assessment issues arise and

that it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

12.0 Decision

12.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act 2000 to remove Condition 5 and the reason therefore.

Reasons and Considerations

12.2. Having regard to the nature and scale of the proposed development, and the pattern of development in the area, including the recent grants of planning permission for developments of a similar size and scale to that proposed, together with the provisions of the Urban Development and Building Height Guidelines (2018) and specifically SPPR1 where it is the government policy to support increased building height and densities at locations with good public transport accessibility particularly in town/city cores it is considered that the removal of Condition 5(a) is not warranted. Furthermore it is considered that the layout and fenestration arrangements as proposed would not result in a hotel development which would adversely affect the development potential of backlands to the south-east of the subject site. On this basis it is considered appropriate to remove condition 5(b).

Paul Caprani,
Senior Planning Inspector.

December 7th, 2021.