



An
Bord
Pleanála

Inspector's Report ABP316235-23

Development

Protected Structure: Alterations to development previously approved under Reg. Ref: 3281/20 comprising: recessed sixth floor, opening of party wall, provision of stair core to ensure compliance with fire safety regulations and all ancillary works. The proposed works will result in a revised number of 83 hotel bedrooms.

Location

No. 3 Parnell Street, Nos. 4,5 & 6 Parnell Street)a corner site with Jervis Lane Upper, Dublin 1) and Nos.58 & 59 Capel Street, Dublin 1 (which abuts Jervis Lane Upper, Dublin 1 to the rear).

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

3077/23

Applicant(s)

Vision Wave Limited

Type of Application

Permission.

Planning Authority Decision

Split Decision.

Type of Appeal	First & Third Party
Appellant(s)	First Party - Vision Wave Limited Third Party - Maurice McGrath
Observer(s)	None
Date of Site Inspection	18/08/23 and subsequently.
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site comprises nos. 58 & 59 Capel Street and the north eastern corner of the linear city block defined by Capel Street, Mary Street, Jervis Lane Upper and Parnell Street (nos.4,5 & 6 Parnell Street). The applicant site incorporates the protected structure at no. 3 Parnell Street. The site area is given as 895 sqm.
- 1.2. Nos. 58 & 59 Capel Street are two mid-terrace 18th century origin buildings over basement with later insertion commercial ground floor frontages and in the instance of no. 59 Capel Street substantial reconstruction. No. 58 is a 4 storey 3-bay red-brick mid-terrace building with a commercial ground floor. No. 59 is a 3-storey 2-bay red brick mid-terrace building with a commercial ground floor.
- 1.3. The parapet height of no. 59 Capel Street is noticeably taller than the parapet height of no.58 Capel Street, which is aligned with the parapet height of the Capel Street terrace moving south toward the Mary Street junction. The parapet of no. 59 Capel Street is also marginally taller than the Victorian style corner building articulating the Capel Street / Parnell Street junction on the south side of Parnell Street (no. 60 Capel Street & nos. 1, 2 & 2a Parnell Street).
- 1.4. Nos. 58 & 59 Capel Street are located tight to the street edge with no. 58 being slightly set forward of the building line of no.59 and behind the building line of the adjoining terrace moving south, which forms the east side of this part of Capel Street. Consequently no. 58 Capel Street is the transition building between the building line to the north, comprising no. 59 Capel Street and the Capel Street / Parnell Street corner building (No. 60 Capel Street & nos. 1, 2 & 2a Parnell Street) and the adjoining terrace moving south.
- 1.5. The building immediately to the south is no. 57 Capel Street, which abuts the applicant site along its northern property boundary. No. 57 Capel Street is a protected structure.
- 1.6. No.3 Parnell Street is a 3-storey over basement eighteenth-century / early nineteenth-century building designated a protected structure and is in very poor condition.

- 1.7. Nos. 4,5 & 6 Parnell Street comprise a derelict site at the corner of Parnell Street and Jervis Lane Upper with part of the ground floor fabric extant. This site has been derelict for a significant number of years and presents negatively to the street.
- 1.8. The buildings on Jervis Lane Upper comprise an eclectic mix of mews type structures.
- 1.9. The subject properties have been assembled to form one development site that fronts onto Capel Street, Parnell Street and Jervis Lane Upper. The prominent 4-storey Victorian style corner building at the junction of Capel Street and Parnell Street does not form part of the applicant site.

2.0 Proposed Development

- 2.1. Alterations to development previously approved under Reg. Ref: 3281/20 comprising: recessed sixth floor, opening of party wall, provision of stair core to ensure compliance with fire safety regulations and all ancillary works. The proposed works will result in a revised number of 83 hotel bedrooms. The proposed development in detail comprises the following:
 - (i) Provision of new recessed sixth floor level comprising 6 bedrooms;
 - (ii) reduction in the footprint of the fifth floor level by 6sqm.;
 - (iii) opening up of existing party wall between Nos. 58 & 59 (from first to third floor level) and provision of new stair core within new-build element (from basement to fifth floor level) to ensure compliance with fire safety regulations;
 - (iv) fitting of louvered screens to the bedrooms nos. 114,115, 214, 215, 314 & 315 within new build element (at first to third floor level) and;
 - (v) all ancillary works, including general reconfiguration of all floor levels (from basement to fifth floor level) necessary to facilitate the development.

3.0 Planning Authority Decision

3.1. Decision

Split Decision

Grant permission for the opening-up of the party wall from first to third floor level between Nos. 58 7 59 Capel Street, the provision of new stair core within new-build element from basement to fifth floor level, the fitting of louvred screens to the windows of the bedrooms Nos. 114, 115, 214, 215, 314 & 315 and all ancillary works, including general reconfiguration of all floor levels (from basement to fifth floor level - subject to conditions contained in Schedule 1 including:

Condition 4

The developer shall comply with the following requirements of the Transportation Planning Division:

- (a) The development shall otherwise be carried out in accordance with the conditions attached to the parent permission Register Reference 3281-20/ABP-309511-21 (the 'parent permission') unless otherwise amended below.*
- (b) The glass canopy proposed for No.3 Parnell Street shall be omitted.*
- (c) All costs incurred by Dublin city council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.*
- (d) The developer shall be obliged to comply with the requirements set out in the Code of Practice.*

Reason: To ensure a satisfactory standard of development.

Refuse permission subject to Schedule 2 reasons:

Having regard to the prominent and sensitive location of the subject site, which is within the Capel Street Architectural Conservation Area and includes a Protected Structure, the proposed additional floor will, by way of its height and massing, prove visually obtrusive and would detract from the character and setting of the surrounding area. Permitting the proposed additional floor would set an undesirable precedent for similar development in such areas. As such, the proposed development would be contrary to Policy BHA2, Policy BHA7, Policy BHA9, Section 15.5.1 and Section 15.5.2 of the Dublin City Council Development Plan 2022-28 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflected the recommendation of the planning case officer.

3.2.2. Other Technical Reports

No objection to the proposed development subject to condition.

4.0 Planning History

The following planning history is relevant:

- A concurrent application is the subject of appeal under Register Reference ABP316238-23 (DCC 3056/23) for alterations to development previously approved under register reference: 3281/20/ ABP-309511-21 comprising opening of party wall, provision of stair core to ensure compliance with fire safety regulations and all ancillary works.
- Planning permission was granted for the following development under Register 3281-20/ABP-309511-21 subject to conditions:
 - 1) Demolition of Nos. 58 and 59 Capel Street (excluding the front west-facing facades, the rear east-facing facade of the building to rear of 58 Capel Street fronting Jervis Lane Upper, shared party wall between properties and the original internal structure of No. 58);
 - (2) Demolition of existing single storey structures comprising Nos 4-6 Parnell Street;
 - (3) Internal and external alterations to the existing three storey, over basement building at No. 3 Parnell Street (a protected structure) to accommodate new hotel development with original brickwork to be cleaned and repointed and new traditional style timber windows to be provided in existing openings on front (north facing) facade, existing chimney stack to be retained and refurbished; part-removal of internal partitions/walls to facilitate reconfiguration/refurbishment of ground floor, first floor and second floor levels of No. 3 Parnell Street to facilitate proposed entrance foyer/lobby, bedrooms and connection (including new feature

atrium to rear of existing building) to new hotel development, provision of replacement shop front on No. 3 Parnell Street with associated lighting, signage and new glazed canopy above replacement shopfront;

- (4) Alteration of fenestration, refurbishment and extension by 1 no. storey of rear east-facing facade at 58 Capel Street, refurbishment of front west-facing facade at Nos. 58 & 59 Capel Street to original state with existing brickwork and cleaned and repointed along with the installation of new traditional-style timber windows to replace existing non-original windows; provision of replacement shopfronts to Nos. 58 & 59 Capel Street with associated lighting and signage;
- (5) Construction of a part-five, part-six, part-seven storey (maximum height 25.36 metres from ground level) and over basement 94-bedroom contemporary hotel on the overall site

Condition 2 is relevant:

The fourth floor level of Stair Core 2 and adjoining link corridor shall be omitted. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of protecting the built heritage of the area.

- Planning permission was refused for the development of a 121 bedroom hotel under Register DCC 4747/19 for the following 2 reasons.

The first reason for refusal having regard to the prominent and sensitive location of the subject site, the proposal would have a significant and detrimental impact on a number of important views and vistas in the city and would constitute a visually obtrusive and insensitive form of development. The proposal would perch excessively above the historic roofscapes, would set a precedent for similar undesirable development, would represent an over development of the subject site and is not considered to be of adequate architectural quality to justify a building of this scale within this Architectural Conservation Area (ACA).

The second reason for refusal related to the impact of the proposed development on protected structures. The proposal would seriously injure the settings of adjoining protected structures and would set an undesirable precedent for similar such development.

- Planning permission was granted under register reference 4311/18 for a 65 bedroom contemporary hotel comprising at roof level a sixth floor penthouse incorporating *inter alia* residents private lounge / bar and 2 bedroom suites. The permission conditioned the removal one floor of the development in order to reduce the height of the development.

5.0 Policy and Context

5.1. Development Plan

The relevant local planning policy document is the Dublin City Development Plan 2022-2028.

- **Zoning**

The zoning objective is Z5 'City Centre' (Map E):

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.

- **Chapel Street and Environs Architectural Conservation Area (ACA)**

The proposed development is located within a green-hatch designation comprising the Chapel Street & Environs Architectural Conservation Area (ACA)

Chapter 11 (Built Heritage and Archaeology) Section 11.5.2 (Architectural Conservation Areas) is relevant:

The Planning and Development Act, 2000 (as amended), provides for the protection of Architectural Conservation Areas (ACAs) defined as a place, area, group of structures or townscape that is of special architectural, historical, archaeological, artistic, cultural, scientific, technical, social interest or value, or contributes to the appreciation of protected structures. There are 24 ACA's in Dublin city and suburbs. The applicant site is located within the Capel Street Architectural Conservation Area.

Section 4.1 (Architectural Character) of the Capel Street & Environs Architectural Conservation Area (ACA) clarifies that the character of the street is largely defined by its form and scale: *The street is long and narrow and is further defined by its tall narrow terraced buildings.*

The elements that contribute to the character and special interest of the street taking account, as provide for in the dedicated legislation, *inter alia* building lines and height include the following:

Capel Street due to its form and layout has a strong sense of enclosure and uniformity. This sense of enclosure is reinforced by the vista down Capel Street, which is framed by City Hall at the southern end and at the northern end by the bend in the street as it curves slightly towards Bolton Street.

Section 7.0 (Interventions which would detract from the character) *inter alia* include:

- *The raising of the existing parapet line is inconsistent with the existing pattern of development of the street;*
- *Inappropriate new builds which do not respect the existing massing and scale of the street.*
- *Roofs: The removal and replacement of natural slate (generally 'Blue Bangor') with inappropriate modern substitutes such as artificial slate.*

Section 8.2.1 (Preserving the Character) states it is the overall objective of the planning authority to protect and conserve the character and setting of the ACA, as set out in the Capel Street & Environs Architectural Conservation Area (ACA) document.

Section 8.2.8 (new Build) provides guidance criteria for new development and *inter alia* includes:

New developments should have regard to the grain and character of the adjacent buildings, which shall include height, massing, proportions and plot width. Excellence in contemporary architecture including excellence and innovation in shopfront design shall be encouraged.

- **Built Heritage and Architectural Conservation Area policy context**

Chapter 11, Policy BHA2 (Development of Protected Structures) is relevant and provides that development will conserve and enhance protected structures and their curtilage.

No. 3 Parnell Street is a Protected Structure (RPS Ref: 6422).

Chapter 15 (Development Standards), Section 15.15.2.3 (Protected Structures) of the Dublin City Development Plan 2022-2028 notes that the inclusion of a structure in the Record of Protected Structures does not prevent a change of use of the structure, and/or development of, and/or extension to the structure, provided that the impact of any proposed development does not adversely affect the character of the Protected Structure and its setting. Policy BHA2 provides a list of criteria that need to be satisfied in the development of a protected structure in order *inter alia* to protected the character of the structure and its curtilage.

Chapter 11, Policy BHA7 (Architectural Conservation Areas) is relevant and states:

(a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA 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. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA. Please refer to Appendix 6 for a full list of ACAs in Dublin City.

(b) Ensure that all development proposals within an ACA contribute positively to the character and distinctiveness of the area and have full regard to the guidance set out in the Character Appraisals and Framework for each ACA.

(c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA. Contemporary design which is in harmony with the area will be encouraged.

(d) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

(e) Promote sensitive hard and soft landscaping works that contribute to the character and quality of the ACA.

(f) Promote best conservation practice and encourage the use of appropriately qualified professional advisors, tradesmen and craftsmen, with recognised conservation expertise, for works to buildings of historic significance within ACAs.....

Chapter 11, Policy BHA11 (Rehabilitation and Reuse of Existing Older Buildings) is relevant and *inter alia* states:

(a) To retain, where appropriate, and encourage the rehabilitation and suitable adaptive reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of the area and streetscape, in preference to their demolition and redevelopment.....

- **Development Standards**

Chapter 15 (Development Standards), Section 15.4.2 (Architectural Design Quality) *inter alia* promotes through the use of high quality materials and finishes and the

appropriate building form architectural quality in development, which should positively contribute to the urban design and streetscape, enhancing the overall quality of the urban environment. In particular, development should respond creatively to and respect and enhance its context. Key principles to consider in achieving these architectural quality objectives including those relevant to the proposed development are listed below:

- *The character of both the immediately adjacent buildings, and the wider scale of development and spaces surrounding the site.*
- *The existing context and the relationship to the established pattern, form(s), density and scale of surrounding townscape, taking account of existing rhythms, proportion, symmetries, solid to void relationships, degree of uniformity and the composition of elevations, roofs and building lines.*
- *The scale and pattern of existing streets, squares, lanes and spaces should be considered.*
- *The existing palette of materials and finishes, architectural detailing and landscaping including walls, gates, street furniture, paving and planting.*
- *The suitability of the proposed design to its intended landuse and the wider land-use character of the area, along with its relationship with and contribution to the public realm.*
- *The design of new development should respect and enhance the Dublin's natural assets such as river and canal frontages, the River Liffey and many quality open spaces that contribute positively to the cityscape and urban realm, the settings of protected structures, areas of special interest and important views and that the design incorporates high quality detail, materials and craftsmanship.*
- *The need to protect and enhance natural features of the site, including trees and any landscape setting.*
- *The context and orientation in relation to daylight, sunlight and overshadowing and environmental performance including climate impacts such as downdraft or wind tunnelling.*
- *The main routes which should be distinguished by exploiting vistas, key buildings and landmarks with the activities and functions of the places made visible, thus bringing a sense of liveliness to spaces.*

- *Landmark features which can be used to give treatment to main entrances to a development, complement open spaces and assist in place-making and identity*

Chapter 15, Section 15.5 (Site Characteristics and Design Parameters) provides guidance on identifying the high level characteristics which shape the urban design response to a site to ensure the creation of good quality urban environments including:

Section 15.5.1 (Brownfield, Regeneration Sites and Large Scale Development) is relevant and refers to the development of brownfield sites, which are of sufficient scale to differentiate them from the surrounding townscape. The criteria listed to guide such development includes *inter alia* the following:

- *To encourage innovative, high quality urban design and architectural detail in all new development proposals.*
- *To analyse and review the surrounding built environment to ensure the new development is consistent with the character of the area.....*

And Section 15.5.2 (infill Development) is relevant and provides that infill development should complement the existing streetscape, providing for a new urban design quality to the area. It is particularly important that proposed infill development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape, as such the planning authority will require infill development to respect and complement the prevailing scale, mass and architectural design in the surrounding townscape.

- **Architectural Heritage Protection Guidelines**

In terms of national guidance - Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht are relevant.

Further detail on the appropriateness of works *inter alia* to a protected structures is provided for in the Department of Environment, Heritage & Local Government – conservation advice series.

5.2. EIA Screening

The development is not in a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

First Party Appeal

The appeal statement is prepared by Hughes Planning and Development Consultants, on behalf of the applicant, Vision Wave Limited. The grounds of appeal are summarised below:

- The proposed sixth floor (seventh-storey level) is the most efficient means of site development, would provide a much reduced quantum of development to that originally proposed in earlier applications for planning permission on the site and would provide for a limited increase in building height over the hotel development previously approved under register reference 3281/20;
- The proposed development has been designed with due regard to the decision of An Bord Pleanála contained in the Order issued under register reference ABP 309511-21 (DCC3281/20), including the requirement for the reduction in maximum building height, the introduction of a new reflective glass cladding material finish to the penthouse elevations and a reduction in the footprint of the penthouse (seventh storey level) previously refused and penultimate floor level previously approved (sixth-storey level);
- The quantum of development originally proposed in the first application for hotel development on this site has been significantly reduced, as can be gaged from the planning history documented in the appeal statement. The proposed overall development would comprise a floor area of 4,592 sqm (DCC 3077/23 – ABP-316235-23) in comparison to the original proposal for a floor area of 5,607 sqm (DCC4311/18 – ABP304881). A table detailing the

chronology of planning application and the corresponding proposed floor area of each application is incorporated into the appeal statement;

- The proposed development would have limited visual impact. A photomontage document (Visual Impact Assessment) is attached to the appeal statement. The VIA concentrates on 6 of the most visible observation points, which evidences that the proposed additional floor would only be noticeable from a few visible locations within close proximity. The proposal will not have an unacceptable impact on the surrounding skyline or streetscape. In the noticeable locations the material finish of the additional floor, which would exhibit a reflective glass cladding elevation finish would provide for a unique transition between building and skyline;
- The planning case officer simply reinstated the concern of the conservation officer without providing any discussion as to the manner the height, scale and massing offends the setting of the protected structure and the wider conservation area. The appellant argues that the planning authority has unambiguously reinstated a height previously approved by the An Bord Pleanála rather than assessing the submitted rationale for additional height provided by the applicant, including the use of a reflective material finish to reduce impact;
- The proposed development is appropriately designed to ensure the continued prominence of protected structures within the site. The proposed additional floor has been purposefully designed to minimise visual impact through the use of finishing materials. The setback provided atop No. 3 Parnell Street represents a unique feature.
- Contemporary design is acceptable in an Architectural Conservation Area (ACA) subject to the development respecting the scale and character of the area. The contemporary form and considered scale of the overall development makes a positive contribution to the to existing urban streetscape by reason of providing variation in building heights along Parnell Street in a manner that creates visual interest in the skyline. The proposed development provides for the highest standard of architectural design

complementing the retained restored period buildings in accordance with the relevant policy provisions of the Dublin City Development Plan 2022-2028 ;

- The prominent corner location and vacant nature of a large part of the development site provides its own context with regard to building height. The setbacks achieved in respect of no.3 Parnell Street, a protected structure, and the Capel Street elevation, in conjunction with the proposed restoration works to the façades and fabric, will protect the character of the buildings to be retained. The development ensures that extensions are subordinate to these buildings viewed from proximate viewpoints (street level) where their features are most appreciated in accordance with Section 16.2.2.3 (Extensions & Alterations) of the Dublin City Development Plan 2022-2028;
- In the context of the Capel Street and Environs Architectural Conservation Area (ACA) designation, the proposed development does not compromise any sensitive views or detract from protected structures in the vicinity. The development has no impact on the substantive Capel Street vista - the view south toward City Hall;
- The proposed development has regard to the grain and character of adjacent buildings and is designed to appropriate height, massing and proportion. The design is not pastiche and would provide a contemporary development of unique architectural quality in accordance with the design requirements for development within an architectural conservation area (ACA). The approved development maintains the historic plot widths and restores fabric, which sets a precedent for improvement within the wider ACA;
- A number of precedents are cited by way of example of buildings of increased height in close proximity to protected structures and period buildings to justify the proposed sixth floor.
- The subject site while containing a protected structure and adjoining the site of another protected structure sits opposite a non-descript mixed-use development of no particular architectural merit, is adjoined by a vacant site to the immediate north and an unremarkable residential apartment scheme to the immediate east. In this regard it is argued that the subject site is appropriately suited to absorb additional modern development of unique

contemporary quality. The precedent of Register Reference DCC 2682/20 – ABP-P309217-21 (DIT / TUD site, Kevin Street Lower, Dublin 6) is cited with reference to the Inspector's Report, which acknowledged that the development site surroundings had accommodated other large-scale developments in the vicinity, which contributed to the increasing 20th century character of the area and the toleration of structures of scale and contrasting design.

Third Party Appeal

The appeal statement is prepared by William Doran (Tech), Planning and Project Management Consultant, on behalf of the appellant Mr. Maurice McGrath of no. 57 Capel Street. The grounds of appeal are summarised below:

- The subject planning application under appeal overlaps with planning application 3056/23, which is also on appeal;
- The public notice describes the number of bedrooms at 83. Section 4 of the Conservation method statement as 77. It is plain the 6 bedrooms are proposed on the sixth floor;
- The appellant supports the decision of the planning authority to remove the sixth floor. The current application shows the sixth floor as almost invisible on the submitted elevations. The floor was removed by the planning authority and An Bord Pleanála under planning register reference 3281/20 and ABP309511-21, respectively;
- The sixth floor will impact on light and daylight reaching the north facing windows of the apartments located at no. 57 Capel Street abutting the applicant site, which is in the ownership of the appellant. The appellant references a drawing attached to the appeal statement (DRG. 6399-101) and the attached photographs;
- The elevations submitted show a collection of red dashed lines without explanation. However, an elevation drawing of the side of No. 57 Capel Street abutting the applicant site has not been submitted. The appellant has

submitted the side elevation of No. 57 Capel Street showing the north facing window openings impacted by the proposed development (DRG. 6399-101);

- No. 57A Jervis Lane Upper is outlined in blue on the submitted drawings, which is partly in the ownership of the appellant. The part of no. 57A in the ownership of the appellant has a window(s) on the boundary with the application site;
- The applicant proposes to build the cocktail /wine bar at ground level and bedroom 111 on the first floor directly in front of a windows lighting an apartment in the appellant's ownership. It would appear that the proposed development is built in front of windows in No. 57 Capel Street, in particular windows 1A and 4A shown on the drawing attached to the appeal statement (DRG. 6399-101). The applicants do not have the permission or authority to build directly in front of the subject windows;
- The proposed outdoor sitting area shown on the submitted drawing(s) (DRG. 2018-45-P4A-102) is directly below the apartment bedroom windows in the north wall of no. 57 Capel Street abutting the proposed development, which will result in a loss of residential amenity;
- The proposed ensuite in room 317 will block light to the angled window in no. 57 Capel Street marked Window 4A on the drawing attached with the appeal statement ((DRG. 6399-101);
- It is unclear how the proposed privacy screens to the hotel bedrooms will work in practice to mitigate overlooking of no. 57 Capel Street. A number of hotel bedrooms will now look directly into the apartments in no. 57/57A. The relocation of the stair core may be a ruse to achieve an extra bedroom on each floor of the impacted floors of the proposed hotel. The floor plans do not highlight in green that an additional bedroom is to be added to the 1st, 2nd and 3rd floors;
- The proposed development overlooks no. 57 Capel Street in a significant number of ways, including overlooking of the roof garden, and the applicants have not addressed this issue. Overlooking is possible from the balconies on the 5th floor serving rooms 502 & 503, the windows of rooms 604 & 605 located on the proposed additional floor (the additional floor which is not the

subject of this application it is claimed will impact on light and daylight reaching the apartments with north facing windows), the glazing to Stairs 2, the wide windows of rooms 111,112, 211,212, 311, 312, 408 & 409 and, the windows of rooms 114, 214, 314, 115, 215 & 315 as they have windows directly opposite and less than 10m from windows in the apartments in no. 57;

6.2. Applicant Response

The applicant response prepared by Hughes Planning, on behalf of Vision Wave Limited, is summarised below:

- ABP is requested to uphold the decision of the planning authority, as the proposed development accords with the policies and objectives of the Dublin City Development Plan 2022-2028, and grant planning permission on the grounds of this first party appeal;
- The applicant response will focus on the development proposal the subject of the appeal and will not comment on design elements previously authorised. The applicant invites the Board to disregard comments on elements previously approved;
- The applicant notes that the appellant has also lodged an appeal against the concurrent development submitted under register reference 3056/23 – ABP316238-23 and that the grounds of appeal substantially overlap;
- The proposed sixth floor will not have an impact on the apartments in no. 57 Capel Street in terms of loss of light because of the orientation of the site. The massing is to the north of the appellant's property as evidenced in previous reports supporting additional massing;
- The applicant claims that all elements of the development that relate to noise have previously been approved and are not the subject of this application;
- In the matter of Room 317, the location has changed, however, no change to the configuration of the room is proposed, which is the substance of the appeal observation;

- The applicant claims that the provision of the louvred windows, in conjunction with the separation distance of 9.55m and general layout of the development is sufficient to dispel concerns that relate to undue overlooking from rooms 115, 214, 215, 314, 315;
- In the matter of overlooking of the roof garden of no. 57 Capel Street, it is noted that there is no permission for a roof garden at no. 57 Capel Street.

6.3. Planning Authority Response

The planning authority request that ABP uphold the split decision recorded.

The planning authority also request that if permission is granted that Section 48 and Section 49 (Luas X City) development contribution conditions are applied.

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions and encapsulates my *de novo* consideration of the following modifications, which include:

- (i) Provision of new recessed sixth floor level comprising 6 bedrooms;
- (ii) reduction in the footprint of the fifth floor level by 6sqm.;
- (iii) opening up of existing party wall between Nos. 58 & 59 (from first to third floor level) and provision of new stair core within new-build element (from basement to fifth floor level);
- (iv) fitting of louvered screens to the bedrooms nos. 114,115,214, 215, 314 & 315 within new build element (at first to third floor level);
- (v) all ancillary works, including general reconfiguration of all floor levels (from basement to fifth floor level) necessary to facilitate the development;

The internal reconfiguration would accommodate the relocation of stair core 2 to satisfy fire safety requirements.

The reconfiguration of the fifth, fourth, third, second and first floors would result in the loss of one bedroom per floor. The reconfiguration of the first, second and third floors would also result in the provision of two new bedrooms per floor. An overall net increase of 1 bedroom.

It is noted that six additional hotel bedrooms would be accommodated within the footprint of the proposed additional sixth-floor penthouse.

The proposed development would increase the number of hotel bedrooms from the 76 bedrooms approved under the parent planning permission granted under register reference DCC 3281-20 / ABP-309511-21 to a total of 83 bedrooms. An overall net increase of 7 bedrooms.

An appeal under register reference ABP-316238-23 also for amendment of the parent permission, solely relating to modifications (iii), (iv) & (v) listed above, and is being assessed concurrently.

- 7.2. The first party grounds of appeal argue that the most efficient site development option is the inclusion of an additional sixth penthouse floor positioned above the existing approved development. The proposed sixth penthouse floor would be significantly reduced in scale in comparison to the sixth floor level originally proposed and rejected by the planning authority and An Bord Pleanála. It is claimed that the applicant has taken cognisance of the reasons for rejection for additional height and massing previously recorded by providing for a reduced penthouse height, footprint and alternative material finish.

The quantum of development originally proposed in the first application for hotel development on site has been significantly reduced. The proposed overall development would comprise a floor area of 4,592 sqm (DCC 3077/23 – ABP-316235-23) in comparison to the original proposed floor area of 5,607 sqm (DCC4311/18 – ABP304881). The appellant notes that the height of the building incorporating the additional sixth floor penthouse would be marginally higher than the overall development previously approved under register reference DCC 3281-20 / ABP-309511-21.

The appellant cites precedent elsewhere in Dublin city by way of example of buildings of increased height granted planning permission in close proximity to protected structures and period buildings within conservation areas to justify the proposed sixth floor. It is noted that none of the precedents cited are located within a statutory Architectural Conservation Area. In the instance of Register Reference DCC 2682/20 – ABP-P309217-21 (DIT / TUD site, Kevin Street Lower, Dublin 6) the site area comprises the substantive part of a whole city block and the floor area of

the proposed development is 85,436 sqm. It is considered that the site area, scale and nature of the development at Keven Street Lower is not applicable to the applicant site in terms of relevant comparison.

- 7.3. The third party grounds of appeal relate *inter alia* to the impact of the proposed modifications on apartments located in no. 57 Capel Street. No.57 Capel Street extends beyond the rear building line of the Capel Street terrace. There are a number of window openings in the north elevation of no. 57 Capel Street overlooking the applicant site. The appellant has attached a drawing with the appeal statement showing the location of the subject window openings ((DRG. 6399-101).

The appellant claims that the proposed internal reconfiguration of the first, second and third floors to incorporate two new south facing bedrooms per floor would result in overlooking of the apartments in no.57 Capel Street. It is claimed the proposed louvered privacy screens would not mitigate the potential overlooking. Furthermore, the incorporation of an additional sixth floor penthouse level would cause overlooking and overshadowing of the apartments in no. 57 Capel Street and its roof garden amenity space. The proposal would result in overlooking, overshadowing and noise disturbance, which it is claimed would result in a significant loss of residential amenity.

- 7.4. The substantive part of the development proposal is that the sixth floor omitted under the parent permission register reference DCC 3281-20 / ABP-309511-21 is reintroduced in a new form in the current application as a penthouse level - Modification (i). The footprint of the penultimate fifth floor would be marginally reduced - Modification (ii). The 6 sqm. footprint reduction would accommodate the positioning of the new penthouse level and decrease the visibility of both upper levels when viewed from the street.

The footprint of the proposed sixth floor would be an approximate 345 sqm. The penthouse level would be clad in a reflective glass cladding system. The overall proposed height of the building would measure an approximate 29.5m (ground level is given as +5.770m) to parapet height (north elevation). The approved north elevation parapet height is given as an approximate 27m (ground level is given as +5.770m).

7.5. The Dublin City Development Plan 2022-2028 Chapter 9 provides the heritage policy context for the city and suburbs, which *inter alia* provides guidance in the matter of the development of protected structures, other heritage buildings and development within conservation areas and architectural conservation areas. The applicant site is within an architectural conservation area designation: the Capel Street and Environs Architectural Conservation Area (ACA). The character of the Capel Street and Environs Architectural Conservation Area is largely defined by its form and scale: *The street is long and narrow and is further defined by its tall narrow terraced buildings.....*

7.6. Policy BHA7 (Architectural Conservation Areas) protects the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). The policy provides criteria for development within architectural conservation areas. The criteria include the requirement that *new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA.*

Capel Street is defined by a long narrow streetscape of 4-storey terraced buildings with narrow plot widths predominating on both sides of a north-south street axis. The average shoulder parapet height on Capel Street to the south of the applicant site is circa. 20m (ground floor level given as +5.770) behind which the pitched roof scape of the Capel street buildings is not visible from street level. However, the pattern of development in the area is not globally uniform.

The Capel Street / Parnell Street corner on the south side of Parnell Street is articulated by a robust 4-storey Victorian style commercial building comprising the addresses no. 60 Capel Street and nos.1, 2 & 2a Parnell Street. The predominant building height on Parnell Street from the junction with Capel Street to the access to Jervis Lane comprises 3/2-storey buildings within narrow plot widths; no. 3 Parnell Street (protected structure) is the sole remaining 3-storey building on this stretch of Parnell Street on the south side of the street.

The streetscape on both sides of Parnell Street exhibit a high level of dereliction in the immediate vicinity of the applicant site including nos. 4, 5 & 6 Parnell Street,

which form part of the development site. The Parnell streetscape to the immediate east of the applicant site across Jervis Lane accommodates a modern 4-storey mixed-use streetscape building with a horizontal emphasis modulated by upper floor access exhibiting uniform parapet height for the length of its long elevation to Wolfe Tone Street.

- 7.7. The proposed sixth floor penthouse level would be set back from the Capel Street building line at a distance of approximately 20m from the east terrace parapet. The submitted photomontages are taken from identified viewing points to the west, north and east (Report containing photomontage images existing / granted / proposed submitted with first party appeal received 12/04/2023). The visual impact of the proposed additional floor as observed from viewing points to west and north west would be mitigated by the significant set-back of the foot-print of the proposed penthouse level from the Capel Street building line and by reason of the material finish of the opaque penthouse level elevations as represented in the photomontages.

The proposed sixth floor penthouse is discernible looking south at the northern apex of Capel Street. However, there is no significant impact on the important Capel Street vista looking south toward City Hall given the significant set-back of the footprint of the sixth floor from the Capel Street building line. The proposed sixth floor would, however, have a material visual impact when observed from viewing points to the immediate north and east of the new-build element of the hotel development (Views 4,5 & 6 contained in the Report submitted 12/04/2023). The appellant argues that observation from the noticeable viewpoints will be mitigated by the proposed new reflective glazing finish to the penthouse floor of the development.

- 7.8. The Parnell streetscape to the east of Jervis Lane upper comprises a 4-storey mixed-use building comprising 3 residential floor over a commercial ground floor. The Parnell streetscape immediately to the west abutting the approved new build element of the hotel comprises the 3-storey protected structure at no. 3 Parnell Street. The shoulder height of Capel Street, the principal streetscape within the architectural conservation area, is approximately 20m (ground floor level given as +5.770).

The proposed development would represent a building height of 29.5m (ground floor level given as +5.770) to parapet height on the proposed northern elevation and approximately 30m (ground floor level given as +5.770) to lift shaft level significantly in excess of the parapet height of Capel Street. The proposed building height represents a significant deviation from the established height benchmark in the vicinity represented by the Parnell Street and Capel Street streetscapes.

The appellant argues that the material finish of the proposed sixth-floor penthouse elevations provides a strong rationale to reassess the benchmark height of the development established by An Bord Pleanála under the parent permission register reference (DCC 3281-20 / ABP-309511-21). The appellant claims the glass cladding finish of the sixth floor would provide for a unique transition between building and skyline. I can only conclude that the justification is part invisibility. The conservation officer's observations cited in the planning case officer's report notes that the use of extensive reflective glazing would not be appropriate given the location of the development within the Capel Street and Environs Architectural Conservation Area.

- 7.9. The planning history on the site evidences that the incorporation of a seventh floor (six floors above ground floor level) has been the long-term strategic site development goal of the applicant. The planning authority and An Bord Pleanála have consistently rejected the approval of a seven-storey building at this location. In the instance of the current proposal for a seven-storey building at the corner of Parnell Street and Jervis Lane Upper, a variation in material finish and a series of roofline setbacks are the design justification proposed by the appellant. I am not convinced by either the design solution or the principle of height maximisation at this random location on the Parnell streetscape.

The proposed location of the sixth penthouse floor is at the north-eastern extremity of the city block defined by Capel Street, Parnell Street, Jervis Lane Upper and Mary Street positioned at the opening of Parnell Street and the narrow Jervis Lane Upper. There is no urban design rationale provided by the appellant for the maximisation of height at this location other than providing for a variation of building height along Parnell Street. It is considered that the strategic development goal of the applicant to achieve a seven-storey building at this location has no urban design underpinning. I further consider mitigation of height and massing by reason of the partial invisibility

afforded by the proposed reflective glazed material finish, citing a 'unique transition between building and skyline', is not an acceptable response to excessive height and massing within the architectural conservation area notwithstanding the infill brownfield nature of part of the site.

- 7.10. The logic for the designation of the architectural conservation area is the protection of the special architectural interest of Capel Street and also its environs taking into consideration *inter alia* building lines and height. Furthermore, Section 8.2.8 (new Build) of the Capel Street and Environs Architectural Conservation Area provides guidance requiring new build development to have regard to the grain and character of adjacent buildings, which shall include height, massing, proportions and plot width. Furthermore, chapter 15, Section 15.4.2 (Architectural Design Quality) *inter alia* promotes through the use of high quality materials and finishes and the appropriate building form architectural quality in development.

Section 15.4.2 (Architectural Design Quality) requires key principles to be considered in achieving architectural quality objectives. It is considered that the proposed development does not satisfy a number of these key considerations listed in Section 15.4.2 of the Dublin City Development Plan 2022-2028. The sixth floor penthouse, in combination with the previously approved five-storey over ground floor level development, would be inconsistent with Section 15.4.2 including the requirement to respect the character of both the immediate adjacent buildings, including the 3-storey protected structure at no. 3 Parnell Street, and the wider scale of development and spaces surrounding the site.

It is considered that the proposed development in combination with the approved hotel would significantly deviate from the height, scale and massing of the existing streets, lanes and spaces in the vicinity. It would in design be acontextual given the proposed relationship of the aggregate development to the established pattern, form(s) and scale of the surrounding townscape including the townscape within the designated Capel Street and Environs Architectural Conservation Area (ACA).

Therefore, the aggregate proposed development would be inconsistent with statutory policies and objectives *inter alia* including Section 8.2.8 (New Development) of the Capel Street and Environs Architectural Conservation Area (ACA), Section 15.4.2 (Architectural Design Quality) of the Dublin City Development Plan 2022-2028 and

policy objective BHA7 (Architectural Conservation Areas) of the Dublin City Development Plan 2022-2028, which seeks to protect the special character of an architectural conservation area.

7.11. Policy BHA2 (Development of Protected Structures) is relevant and provides that development will conserve and enhance protected structures and their curtilage. No. 3 Parnell Street is a protected structure (RPS Ref: 6422). The proposed modifications would not impact on the fabric of the protected structure. However, the increase in height and massing of the sixth-floor penthouse to the immediate east of no.3 Parnell Street would have an impact on the setting of the protected structure. It is considered that the proposed development would be inconsistent with Policy BHA2 by reason of the additional height and massing abutting the protected structure, which would detract from the setting of the protected structure.

7.12. Policy BHA11(Rehabilitation and Reuse of Existing Older Buildings) provides for the retention and encourages the rehabilitation and suitable adaptive reuse of existing older buildings, which make a positive contribution to the character and appearance of the area and streetscape. No. 58 & 59 Capel Street are older buildings in part dating from the eighteenth-century. They are not protected structures. Nos. 58 & 59 are to be retained (in the instance of no. 59 Capel Street the façade and party walls will be retained) and adapted to reuse as part of the hotel development approved under the parent permission.

No. 3 Parnell Street, which is a protected structure, will be restored and suitably adapted to reuse as part of the hotel development as the entrance foyer and two guest bedrooms. It is considered that the proposed modifications (iii), (iv) and (v), which would facilitate fire safety requirements for the overall hotel development, including the opening up of the party wall between nos. 58 & 59 Capel Street, would be consistent with Policy BHA11 of the Dublin City Development Plan 2022-2028.

7.13. The Dublin City Development Plan 2022-2028 Chapter 15, Section 15.5 (Site Characteristics and Design Parameters) provides guidance on identifying the high level characteristics which shape the urban design response to a site to ensure the creation of good quality urban environments including guidance in the matter of larger brownfield development sites. Section 15.5.1 (Brownfield, Regeneration Sites and Large Scale Development) requires brownfield development sites that are of a

sufficient scale to differentiate them from the surrounding townscape to meet a number of criteria including the requirement for an innovative high quality design response while ensuring that the development is consistent with the character of the surrounding built environment. The pattern of development in the area is described above. It is considered that the proposed sixth floor penthouse in combination with the approved hotel development would in aggregate be inconsistent with Section 15.5.1 *inter alia* by reason of the requirement to integrate with the surrounding built environment to ensure the new development is consistent with the character of the area.

- 7.14. Furthermore, Chapter 15, Section 15.5.2 (infill development) requires sensitive intervention, as such, infill development will respect and complement the prevailing scale, mass and architectural design in the surrounding townscape and provide for a new urban design quality to the area. The applicant site area is given as 895 sqm. It is modest in scale and must accommodate the retention of existing buildings. The appellant argues that the subject site can determine its own height by reason of its brownfield character. The infill site per se comprises only part of the overall applicant site. It is considered that the modest footprint of the development site combined with existing constraints would evidence that this is not a tenable or reasonable argument.

The proposed sixth-floor penthouse level would be positioned above the approved infill development element of the overall proposal at the junction of Parnell Street and the narrow Jervis Lane Upper. It is considered that there is no urban design rationale provided by the appellant for the maximisation of height at the north-eastern extremity of the city block defined by Jervis Lane Upper, Mary Street, Capel Street and Parnell Street. It is further considered that the proposed additional sixth floor would be inconsistent with Section 15.5.2 *inter alia* by reason of the requirement for infill development to enhance context, integrate with its surroundings and ensure a more coherent cityscape.

- 7.15. The modifications (iii), (iv) and (v) are proposed to facilitate fire safety *inter alia* requiring the relocation of stair core 2. The relocation of the stair core would require the internal reconfiguration of the bedroom layout on all the upper floors. The first, second, third, fourth and fifth floors would lose one approved bedroom at each level and two new bedrooms on the first, second and third floors would be substituted in

an alternative location. The new bedrooms would elevate onto the south internal courtyard of the approved hotel development and would replace the window openings that lighted the stair core in the approved hotel development. The new south facing bedrooms would be directly opposite the north elevation windows of no. 57 Capel street located approximately 10m from no. 57 Capel Street and separated by the approved internal courtyard.

The proposed six number windows to the southern elevation bedrooms at first, second and third floor level would be located above the ground floor courtyard. The window openings would be fitted with louvre privacy screens. The concerns of the third party appellant are noted. However, given the city centre location and restricted site configuration of the approved developmet. It is considered that the provision of two south facing bedrooms to each of the first, second and third floors levels would not result in significant overlooking of the north elevation of no. 57 Capel Street given the approximate 10m separation distance provided by the internal courtyard of the approved hotel development and the mitigation provided by the proposed louvre privacy screens.

The potential overshadowing and overlooking of no. 57 Capel Street by reason of the incorporation of a sixth floor is not considered in this assessment as modification (i) & (ii) are not acceptable in principle. In regard to the other matters mentioned in the grounds of the third party appeal, it is considered that these matters have been dealt with as part of the parent planning permission granted under register reference DCC 3281-20 / ABP-309511-21.

- 7.16. In conclusion, given the location of the proposed development within a designated architectural conservation area, the Capel Street and Environs Architectural Conservation Area (ACA), where the character of the conservation area is defined *inter alia* by reason of the form and scale of Capel Street, which has a shoulder parapet height of circa. 20m (ground floor level given as +5.770), it is considered that the proposed sixth floor penthouse incorporating a reflective glazed material finish, notwithstanding a reduced footprint and significant set back from Capel Street (approximately 20m), would in combination with the five-storey over ground floor level approved development, be excessive in massing and height given an approximate proposed height of 30m to lift shaft level (ground floor given as +5.770) and would be inconsistent *inter alia* with statutory policy objectives including the

heritage policy framework of the Dublin City Development Plan 2022-2028 and the requirement for infill brownfield development to complement existing context and provide a new urban design quality for an area and as such would set an undesirable precedent for similar development within architectural conservation areas and should be refused planning permission.

In the matter of modifications (iii), (iv) and (v) having regard to the grounds of appeal, the zoning objective and the heritage policy framework of the Dublin City Development Plan 2022-2028, it is considered that the proposed modifications (iii), (iv) & (v) would not significantly impact on existing residential amenities, would not detract from the setting of no.3 Parnell Street a protected structure, would be consistent with Policy BHA11, which seeks to retain and encourage the rehabilitation and suitable adaptive reuse of existing older buildings, and would be consistent with the proper planning and sustainable development of the area and as such should be granted planning permission.

7.17. Appropriate Assessment Screening

The proposed development comprises modifications to an approved development in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

- 8.1. I recommend a split decision to grant planning permission for modifications (iii), (iv) & (v) and refuse planning permission for modification (i) and (ii).

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the reason for refusal, the city centre zoning objective and the policy framework provided by the Dublin City Development Plan 2022-2028, It is considered that the proposed modifications to facilitate fire safety considerations modification (iii), (iv) & (v), would be consistent *inter alia* with Policy BHA11(Rehabilitation and Reuse of Existing Older Buildings), which provides for the retention and encourages the rehabilitation and suitable adaptive reuse of existing

older buildings, would not on balance depreciate the residential amenities of apartment residents at no. 57 Capel Street and as such would be consistent with the proper planning and sustainable development of the area.

It is further considered that modification (i) & (ii), comprising a sixth floor penthouse and minor modification of the approved fifth floor level, combined with the new-build five-storey over ground floor level hotel development previously approved, by reason of excessive height and massing at this sensitive infill location within a dedicated architectural conservation area (ACA), abutting a protected structure, would be inconsistent with infill development standards, urban design objectives, the Dublin City Development Plan 2022-2028 heritage policy framework and with the proper planning and sustainable development of the area.

Schedule 1

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>

4.	<p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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.</p>

Schedule 2

Having regard to the prominent and sensitive location of the subject site, which is within the Capel Street & Environs Architectural Conservation Area (ACA) and includes a Protected Structure, the proposed additional floor will, by way of its height and massing, prove visually obtrusive and would detract from the character and setting of this designated Architectural Conservation Area. Permitting the proposed additional floor would set an undesirable precedent for similar such development in the vicinity and within designated architectural

conservation areas. Therefore, the proposed development would be contrary to Policy BHA2, Policy BHA7, Section 15.5.1 and Section 15.5.2 of the Dublin City Council Development Plan 2022-28 and would be contrary to the proper planning and sustainable development of the area.

"I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way".

A handwritten signature in black ink, appearing to read 'A. Abbott King', is written over a horizontal line. The signature is stylized and cursive.

Anthony Abbott King
Planning Inspector

25nd September 2023