

Ref.: TC/2076

12 March 2025

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Application: 2024/0993/P

Site: 135-149 Shaftesbury Avenue, London, WC2H 8AH

Proposal: Part demolition, restoration and refurbishment of the existing Grade II listed building, roof extension, and excavation of basement space, to provide a theatre at lower levels, with ancillary restaurant / bar space (Sui Generis) at ground floor level; and hotel (Class C1) at upper levels; provision of ancillary cycle parking, servicing and rooftop plant, and other associated works. RECONSULTATION due to amendments to height, design and massing of roof extension.

Remit:

Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1976 'to promote the better protection of theatres' and provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on

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planning applications which include 'development involving any land on which there is a theatre'.

Comment:

Thank you for re-consulting Theatres Trust on this application for planning permission. We previously provided detailed comments in April 2024. Since that time, we have continued to engage with the applicant and the council. There has now been submission of revised plans and further supporting documents with a number of changes compared to the original submission.

Detailed internal plans now show the indicative layout and function of the theatre. Material changes include a reduction in additional height above the existing building through removal of one level of hotel accommodation. This means an upwards extension of around four to five stories for hotel use (the existing building has additional height to its north-east end around the fly tower). Above that is an additional louvred enclosure for services and PV panels. Previously there was to be a subterranean outwards extension at basement level by excavating underneath the highway; that has now been removed.

Summary of our position and recommendations

We object to the granting of planning permission for this development.

There has been a recent appeal decision for this site issued on 10th March 2021. That followed an Inquiry which opened on 1st December 2020 and sat for twelve days. There are similarities between the two cases in that both sought re-provision of cultural use into a reduced space within basement levels, both would result in internal demolition and change of use of the existing building with upwards extension, and both would result in non-cultural functions becoming the main land use.

For this development to be acceptable the main reasons for dismissal of the previous application would need to be overcome. This application has failed to do that.

We object to this scheme for the following reasons:

- The Optimum Viable Use of this building is as a theatre, at a larger scale with a capacity of around 800-1,000 dependent on configuration. We have

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confidence there are established operators who could viably deliver this thereby avoiding the additional development and harm created by this proposal. This casts considerable doubt on the Appellant's viability evidence and assertion that a 100% theatre use would not be viable.

- The proposed theatre is heavily constrained by its relocation into subterranean levels and would not be able to deliver the audience capacity promoted by the applicant. Although reinstating a theatre use for the first time since 1970, it constitutes a reduction in cultural provision without sufficient evidence for that loss contrary to development plan policy.
- Draft site allocation S19 (HCG4) within the Draft New Local Plan 2024 specifically allocates this site for theatre/cinema or cultural use and does not promote other uses. Development and design principles include retaining the cinema or theatre use and ensuring that other uses on the site do not compromise or restrict the viability or operation of the cinema or theatre. Whilst at this stage only a draft policy with limited weight, it is nonetheless an expression of the importance the council places on this site for cultural provision. We do not consider that vision to be realised by this scheme and there are conflicts which undermine cultural delivery as sought by the draft plan.
- We consider there to be a high level of less than substantial harm to the character and significance of this building with insufficient public benefit to justify that harm, and no proper assessment of alternative options to demonstrate why such scale of additional development is necessary in the first place.
- The previous Inquiry noted how the cultural use and function of this building contributes markedly to its special interest and significance. The scale and massing of additional development markedly diminishes that significance, moreover the proposed development results in a dominance of non-cultural use both visually and functionally.
- The Financial Viability Assessment submitted by the applicant refers to the proposed hotel as "an enabling use". With reference to Historic England good practice guidance on 'Enabling Development and Heritage Assets' (2020) this development is not enabling development. This is because with other

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reasonable alternative means of delivering or designing the scheme with less or no harm it is not necessary and does not secure the future conservation of the asset.

We do not consider our current recommendations to be incompatible with our previous position which is summarised below. Our detailed and reasoned comments and justifications are subsequently also set out. We contend that a dedicated theatre scheme with larger-scale offer is a better long-term opportunity for cultural and economic growth in Camden and the West End.

Summary of our previous position

Our 2024 comments concluded that whilst we supported the return of theatre use to this important building, and welcomed refurbishment and restoration of its exterior (in particular the highly significant decorative frieze by esteemed sculptor Gilbert Bayes), we considered there needed to be a re-design of the scheme. This was to provide a better balance of uses due to the visual and functional dominance of hotel use thereby retaining performance and cultural use as the primary function. In turn there was need to reduce harm to the building in heritage terms.

Moreover, and as also expressed on numerous occasions in subsequent meetings with the applicant and in feedback to them, we sought submission of evidence demonstrating why upwards (and basement) extension of the nature and scale proposed was necessary, why relocation and therefore re-provision of the theatre within the basement extension rather than re-using the existing building and its volume was necessary, and to show that the proposed development constituted the optimum viable use and outcome for this important asset in heritage terms. We noted there had been no appraisal of alternative options other than a circa 220 key hotel which would help evidence and justify the submitted scheme and demonstrate that in heritage terms it constituted optimum viable use or a reasonable alternative.

On an operational level, to ensure future viability and sustainability of a relocated theatre use within subterranean levels, we requested information reassuring that the theatre would be able to safely accommodate sufficient audience capacity, that it would meet the needs of the anticipated operator and that it would be readily adaptable for alternative theatre operators either now or in the future.

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Importance and potential of this building for theatre use

The historic significance of this building as a theatre and the consternation which arose from its loss in 1970 must be acknowledged, galvanising the movement which resulted in formation of Theatres Trust and the Theatres Trust Act 1976 gaining Royal Assent. Although altered internally with the loss of much original fabric it is nonetheless similar to many other conversions of the era in that it is reasonably readily reversible to be able to reinstate theatre use within the existing volume. Following further investigation during the Inquiry additional historic and original fabric and features were discovered including the grid, structural elements of the original auditorium above the cinema screens and remnants of the stage house floors and doors.

This building represents a rare opportunity to provide a larger-scale theatre within 'Theatreland' in London's West End, in fact it is possibly the last and only opportunity. Being an 'island' site with access all around is a further advantage, given the specific servicing requirements associated with theatres and other live performance venues with turnaround of shows necessitating delivery and removal of large sets and stage equipment. It was established within the previous appeal/Inquiry of 2020/21 that there is need and demand for further larger-scale theatre in the West End amongst both operators and producers; the former provided evidence of their willingness to acquire further sites and the latter confirmed there is a challenge in programming available shows due to lack of availability.

We have confidence that interest remains current, and there are parties who could deliver a larger-scale theatre at this site should the opportunity arise. Existing indicative schemes, including an example shown within the applicant's submission documents used at the Inquiry, show that a capacity of 800-900 and possibly up to 1,000 would be realistic and achievable. Such a scheme is also considered viable and deliverable, particularly noting that theatre operators tend to find acceptable a longer period of return than developers of typical commercial schemes as was discussed at the Inquiry.

Whilst not currently a theatre and now vacant following the withdrawal of Odeon as its operator in 2024, this building is nonetheless within cultural use (cinema). It is recognisably a theatre in its design and appearance, emphasised by the frieze depicting 'drama through the ages'. The first priority, also taking relevant policy on

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culture and heritage into account, must be to secure a suitable re-use of this building at existing scale. Theatre is the obvious first priority for that.

On that basis, any deviation from a theatre or other cultural use as the primary and dominant function must be fully evidenced and justified. Given the rarity and significance of this opportunity, decision makers must have absolute certainty that there is no realistic option for delivering larger-scale theatre and that the scheme the applicant has put forward really is the only option to provide a theatre use. However, for the reasons outlined, we do not consider the applicant's proposal is the only or optimum option.

Assessment of the re-located basement theatre as proposed

As an overarching principle we are keen to see theatre use return to this important theatre building and welcome that delivering a theatre has always been the primary cultural objective of the applicant. This scheme is envisaged as a permanent London base for Cirque du Soleil who are a renowned international producer and entertainment company. They would provide a distinct offer which would add to the diversity of provision and further enhance London's cultural and visitor offer. However, unless Cirque du Soleil were to be fully secured as the occupant of the theatre very little weight should be placed on the potential benefits of their offer within the West End and London market.

Following our comments regarding our overall position in relation to this building and its potential, we would not consider re-locating the theatre into basement levels to be the optimum outcome. This is because it introduces constraints which will, to varying extents, reduce achievable capacities and add operational challenges.

The overall merits of relocation, taking into account the justification and rationale for doing so and the overall planning balance, is assessed subsequently within this submission. This section makes an assumption that this is the only realistic option for delivery of a theatre and deals wholly with how this space would function and whether it would be versatile enough to withstand Cirque du Soleil withdrawing and/or an operator taking on the space in the future.

We had many queries and concerns at the earlier stage of application as we had only outline plans to assess. The submission of an indicative detailed scheme is therefore highly beneficial. Alongside that, and following previous formal and informal

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feedback, there have been some positive amendments to plans, for example the relocation of the back of house goods/evacuation lift.

Currently there are just three dressing rooms, one of which is an accessible dressing room. The two larger dressing rooms are at the lowest level of the basement although do each have capacities for around twelve performers. There is no specific 'star' dressing room. This is not ideal but could be made to work, and there is some potential to re-purpose offices and other spaces at upper levels of the basement if required in future.

There is some foyer space with small bars at each of the basement levels, but to reiterate a previous point it remains vital that the ground floor front of house space remains within the ultimate control of the theatre operator and within the overall single rent for the theatre at a realistic rate. This is vital for the financial and operational sustainability and viability of the theatre, as well as safeguarding street-level presence and visibility should the proposed scheme be permitted. There is currently lack of clarity around this point with the plans showing office space for a specified bar/restaurant operator (Insipio) and the Financial Viability Assessment showing separate rental income assumptions (and at a rate which would be extremely challenging for theatre operators to absorb).

Inevitably with a basement location, some elements of this proposal are sub-optimal and require compromise. Overall, however, we consider that the applicant has demonstrated the space can work as a theatre. However, it must be understood and emphasised that this would be at a capacity far below what we consider to be achievable at the site, and the theatre could not be considered 'larger scale'. Rather than the 800-1,000 which we believe could be delivered, this specific basement offer anticipates a capacity of around 294 although it is acknowledged that this is based on the specific specialist model of Cirque de Soleil and a higher capacity than that could be achievable.

It must also be acknowledged and considered that back of house support provision (for example warm up rooms, costume and equipment stores, laundry spaces etc) that one might typically associate with this type of theatre appears limited and again is something that a future operator would struggle to add. Similarly, rather than the indicative capacity of 600 promoted by the applicant, capacities in excess of around 340 would be problematic because there is finite means of escape (only 2 escape stairs both at a limited width of 1200 mm). Increasing the number of escape stairs

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would be challenging due to space limitations, and the costs and complexities in doing so.

It must be noted that even a 'best-case' capacity of around 600 is likely to be substantially lower than could be delivered with a scheme utilising much of the original volume with less additional non-theatre development.

Potential optimum theatre offer

To follow our comments above regarding capacity, the proposed 294 seats is a much smaller capacity than was the case historically (accepting that 1930s capacities are unrealistic due to modern standards of safety and operation). Whilst informal discussions and engagement has indicated auditorium proposals for a capacity of 600-650 within the new subterranean location and of varying theatre formats (end-on, in the round, promenade etc), there would be a need to add significant supporting infrastructure to any such adaptation of the space. For example, WCs and back of house facilities as well as additional means of escape, the fit-out associated with the increased servicing requirements of a higher capacity space (ie mechanical and electrical facility), and improved / larger get-in lift. While it is appreciated that design has been developed to produce an acoustic box to suit both the current operator and any future circa 600 capacity adaptation, and that surrounding infrastructure can be constructed in such a way that it can be relatively easily removed or adapted, the limitations of available footprint coupled with the cost and complexity of such a fit-out would make this challenging. Coupled with the overall negative balance of theatre compared to hotel use this furthers the argument that cultural use is being diminished.

We know from previous discussions and indicative schemes that the existing building could deliver audience capacities in excess of 800-900, possibly up to around 1,000. With the rental expectations as expressed within the Financial Viability Assessment being as they are, such capacities would be needed to make this proposition realistically viable to alternative theatre operators particularly given the building adaptations and fit-out costs which would be needed.

Therefore, as expressed within our previous comments and to the applicant in subsequent discussions, the onus is on them to justify the submitted scheme and to demonstrate that their basement scheme is the best option for theatre use and that overall, the proposed development is the optimum viable use in heritage terms.

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On that basis we consider claims within the Heritage Statement to be incorrect. Paragraph 8.10 states, “It is understood that while a theatre could be recreated in the original location, it would only be able to offer a small number of seats and a much lower quality of performance space when compared with the theatre as proposed.” That conflicts with previous information and is demonstrably untrue, particularly given the capacities the basement space can offer are relatively low.

Building design, height and massing

Despite a decrease in building height compared to the original submission, this scheme still results in substantial additional development which results in hotel use being in the majority. Above ground the building height which can be read is approaching double that of the existing building; the actual height is around double with the additional plant installation and PV panels on top (although we are not opposed to the addition of PV panels and support measures to enhance energy efficiency and carbon reduction). The total balance of uses in terms of overall height when measured from basement has increased in favour of the theatre but is still below half (approximately 45% theatre and 55% hotel). On that basis, it is still the hotel function which dominates. A fundamental conflict with the previous Inquiry decision therefore remains; that decision was clear that much significance derives from single use related to cultural function. Furthermore, the draft site allocation is for theatre/cinema or cultural development. It is not for a hotel development with secondary cultural provision.

The Heritage Statement notes that for “functional and operational reasons, the hotel needs to be for a certain size and the theatre is placed in the new basement”. It is not clear why the hotel must be for a certain size, and it remains the case in that respect that no other options or operators appear to have been considered for the commercial / hotel use who could viably operate with fewer rooms. In turn the ‘need’ for such a quantum of rooms and the cores and servicing which go alongside it appears to be the driver for the theatre being within the subterranean levels, rather than it being the objectively optimum place for the theatre.

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Heritage and viability considerations

The Heritage Statement concludes that this scheme results in a low level of less than substantial harm. That is repeated within other submission documents such as the Planning Statement and Viability Statement. We disagree with that assessment. The 2020/21 appeal determined that the three-storey rooftop extension of the time resulted in significant less than substantial harm. This scheme results in an effective doubling of existing massing. We consider that it is again significant less than substantial harm.

Where there is less than substantial harm this should be weighed against the public benefits of the proposal including securing optimum viable use, as set out in paragraph 215 of the NPPF (2024). Paragraph 7.42 of the Planning Statement suggests the heritage benefits of this proposal are “weighty and count strongly in favour of the scheme” although this leans on townscape and visual benefits as being amongst those public benefits. We suggest this is subjective and not necessarily a benefit at all given the concerns we have at the scale of development and the impact on the original building as a heritage asset, and that a great part of historic significance derives from the building’s cultural function which as a proportion is being significantly reduced. On that basis, the weight afforded to other public benefits, such as repairing and restoring the façade and delivering a new theatre, would need to be greater. However, as a result of the overall nature of this development and the balance of uses, we do not consider that the theatre offer is as significant as it could be.

As noted in paragraph 8.3 of the Planning Statement, the applicant’s assessment as part of the planning balance comes back to their Financial Viability Assessment. We consider that assessment to be flawed. There remains no real assessment of optimum viable use in heritage terms despite it being a significant test under paragraph 215 of the NPPF. It is absent from the Heritage Statement and only referenced within the Planning Statement within descriptions of the relevant paragraphs of the NPPF. This could be because dominant theatre use within the existing footprint is self-evidently the optimum viable use. As there are credible options for that any other scheme would be in conflict with policy.

Paragraph 6 of the Financial Viability Assessment considers the proposed hotel use as an enabling development (something we dispute as set out in our opening summary of reasons for objection). That could trigger paragraph 221 of the NPPF in

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that assessment should be made of whether conflict with policies would be outweighed by the benefits of securing the future conservation of a heritage asset. In this case we do not consider that enabling development is necessary because we are aware of realistic interest in this site by established theatre operators. Three options for development are put forward – the first is the application scheme, the second is a theatre within the existing building envelope and the third is a theatre within the existing envelope but with upwards extension to a level which makes the scheme deliverable.

Repurposing for entirely theatre use is deemed by the applicant to be unviable due to it being loss making. However, as established at the previous Inquiry, theatre operators tend to work on a longer period of return than is acceptable to commercial developers. As noted, we believe operator interest in this site to remain current. Therefore, a dedicated theatre scheme is realistic and could be deliverable.

Only one model of hotel has been explored. We have raised previously that an alternative operator and/or model could result in reduced impact on theatre use and harm to heritage significance and minimise need for additional development.

Concluding comments

The proposed theatre would return theatre use to this important site and introduce a new theatre within the West End for which there is demonstrable need. Whilst constrained and compromised by its subterranean position, it has nonetheless been demonstrated that it could constitute a viable proposition. In isolation, ignoring other factors, we could support this provision if it had come forward as part of a new-build scheme or a new site without current cultural use. However, it must be emphasised again that the reasonable maximum capacity of this space is low by West End standards, and the actual capacity for the specific operator is lower still.

Furthermore, the proposed offer must be viewed within the total context of the size, scale, function and heritage of the existing building, the proposed development as a whole, and the scarcity of opportunity for larger-scale theatre provision. A cultural facility already exists within the location and volume of the existing building, therefore relocation of the cultural facility to basement levels is in effect re-provision. The question, therefore, referencing Policy C3 of the Camden Local Plan (2017), is whether the replacement facility provides the same or better standard of facility which

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is being lost. Additionally, that part of the policy also covers changes to the mix of uses and cultural heritage.

Taking all things into consideration, we do not believe that the proposed theatre is the best option that the site could deliver either in terms of capacity or overall facilities and function. It has been demonstrated that the site is capable of delivering a much larger theatre and there is demonstrable need and operator demand for that. The proposed theatre scheme as submitted could nonetheless be acceptable if it demonstrated it is the only realistic option and is mitigated by the overall planning balance and heritage and public benefits generated.

However, many of the conclusions of our previous formal comments remain current. There is heritage benefit in external repair of the facade and restoration of the frieze, as there is in the concept of restoring theatre use to the site. Overall, we consider this to be a hotel-led scheme with hotel as the majority use. As a result, the cultural use is diminished and the significance of the existing building derived from its performance and cultural function is harmed. We consider the viability information to be flawed and there is still no objective assessment of alternative options or models for development which might be less harmful and provide a better theatre offer. The necessity in providing a smaller cultural space with significant hotel provision is not proven.

We therefore **object** to the granting of planning permission.

Should the council be minded to grant planning permission there is a need for robust planning conditions and/or legal agreements to protect delivery and ongoing future provision and sustainability of the theatre into the future. We have experience of advising local authorities on such matters previously and urge engagement on this case. This might include preventing occupation of all or part of the hotel development until the theatre is operational and safeguarding rental values for the theatre which are realistic and obtainable by theatre operators.

Please contact us if we may be of further assistance or should you wish to discuss these comments in further detail.



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National Planning Adviser

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