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By email only to laura.dorbeck@camden.gov.uk

24 March 2025

Dear Ms Dorbeck,

**PLANNING APPLICATION REFERENCES 2024/0993/P AND 2024/1005/L
SAVILLE THEATRE, 135-149 SHAFTESBURY AVENUE, LONDON, WC2H 8AH
COMMENTS ON HISTORIC ENGLAND CONSULTATION RESPONSE**

As the Applicant's planning consultants, we write to comment on the Historic England (HE) consultation response to the above applications (see letter 11 March 2025, HE reference L01574542).

Our comments fall under the following four headings:

1. Procedural matters (authorisation of the Listed Building Consent);
2. Our reasons for disagreeing with the reasons given for the HE objection;
3. The approach to paragraph 215 of the National Planning Policy Framework (NPPF) which HE applies incorrectly; and
4. HE's remit and the weight to be given to the advice they offer to your authority.

1. Procedural Matters

HE confirms that they authorise your authority to determine the application for Listed Building Consent as you see fit (see page 9).

The consultation letter is accompanied by a letter to the National Planning Case Unit (NPCU) (enclosing the advice letter) confirming HE's flexible authorisation.

This procedure is under the terms of Section 14(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

This position is a departure from the previous consultation response. The previous response advised that HE would not agree to the authorisation of this application for your determination.

The London Borough of Camden may now, directly and without interference, determine the application for Listed Building Consent.

We are shortly to write the NPCU, copying this letter to them.

2. Reasons for Disagreeing with the Advice

The building benefits from an enhanced list entry description (completed in May 2023) which HE cites.

The enhanced list entry description explains the four principal reasons why the building is listed. For completeness we reproduce these below:

Architectural interest:

** for the quality of the architectural composition, its restrained and carefully proportioned form specifically designed to integrate the purpose-designed sculptural work by Gilbert Bayes;*

** for the distinction of Bayes' integrated sculptural work, most notably the 'Drama through the Ages' frieze, which is an especially fine example of this leading sculptor's work that serves to clearly proclaim the building's designed purpose.*

Historic interest:

** as a major theatre built for the impresario A E Fournier during the inter-war West End revival, designed by T P Bennett & Son in collaboration with the veteran theatre architect Bertie Crewe;*

** for the lively historical pageant of theatrical performance displayed in Bayes' frieze, an important example of integrated public sculpture which is redolent of the period in its stylised composition and depiction of famous actors, celebrated plays and theatregoers of the inter-war era.*

The list entry description provides more detail and it is comprehensive, but when it comes to assessing the impact on significance, we consider these four attributes of the building's special interest should form the basis of any analysis.

We consider HE have come to their level of impact (which is one seeking to balance heritage harm and benefit) without sufficient weight to the above, named attributes.

Extent of Demolition

HE reports that the “*roof structure, the surviving internal elements, and the rear elevation of the building contribute to the integrity of the whole*” (see page 6, top paragraph). Their removal would mean the loss, they say, of “*large amounts of original fabric*”, causing harm by reducing the building’s integrity.

We disagree because:

1. These features have lost their original context through the extensive changes the building has undergone, notably the complete removal of the original theatre interior and related spaces. The heritage interest of the building now is no more than its façade, and the main façade is the important.
2. The rear elevation will be reinstated on a like for like basis, reusing original material.
3. The list entry description does not anyway attribute particular intrinsic value to the surviving internal features which are standard and lack any interest in their design or materials.
4. We conclude, therefore, that if there is any harm arising from the removal of internal features, it is very limited, and that HE has overstated this particular impact.

Therefore, the fact that the scheme is, as HE put it, “*essentially a partial façade retention*” (which is accurate) is in itself not objectionable since there is no in principle problem with this approach on the facts of this case, where the interiors of note have already been removed, and the remaining fabric/features are of no real interest or consequence.

Upward Extension

This is the main area of concern to HE, and we agree it is the principal impact which needs to be balanced against heritage and other benefits.

HE’s consideration of this part of the scheme appears based on a comparison with the scheme dismissed Appeal (see PINS references APP/X5210/W/19/3243781 and APP/X5210/Y/19/3243782).

HE finds that the upward extension would sit prominently above the historic building, harming its geometry and departing from the form that characterises the composition’s horizontality and, as a consequence, so harming the setting for the important sculptural frieze (which is the principal feature of interest, and the which is the justification for the listing). See comments page 5 of the letter.

This impact has to be judged with reference to where it can be seen. HE identifies three views.

The view from the north, from Phoenix Gardens, is the one which experiences the greatest change. However, this is the rear elevation, and it plays no part in our appreciation of the sculptural frieze. See View 6 in the *Heritage, Townscape and Visual Impact Assessment* (Montagu Evans, 2025) (HTVIA).

HE also highlights the view north on Mercer Street. This is a partial view of the façade and the frieze, and over this distance one cannot appreciate the detail of that work of art. This view is also partly filtered by trees. See HTVIA View 9.

The third view identified as harmed is that from Shaftesbury Avenue, HTVIA Views 1-4, where one does see the whole of the frieze in its fine, original architectural setting; however, the views available here are close ones, filtered by trees too. As a consequence, the attention of the viewer is on the lower parts of the building. We consider the extension would be noticeable, but in such close locations (represented by HTVIA View 3), the appreciation of buildings is limited to the lower parts.

For this reason, the upward extension does not undermine the ability to appreciate the original elevation's composition, which is the setting for the frieze.

We also consider that the proposed enhancements to the main elevation, notably the restoration of the original window, works of cleaning and repair would enhance the prominence of the 1930s façade.

HE also fails to mention the scale of existing buildings in the setting of the site, which are significantly higher than the listed building.

For the above reasons we consider HE has overstated the impact of the proposals on the features of real interest, expressing the architectural and historic significance of the listed building.

Harm to Other Heritage Assets

On page 7, the letter identifies that the increased scale of the proposals would be *"at odds with the prevailing character and existing landmarks"*, including the Grade I listed Church of St Giles, the Denmark Street Conservation Area and the Seven Dials (Covent Garden) Conservation Area. The church falls within the Denmark Street Conservation Area, so we assume HE are essentially referring to the same impacts.

HTVIA View 8 shows the visual setting change to the Church of St Giles and the Denmark Street Conservation Area. This is a minor effect to a setting which already includes buildings of a similar scale to what is proposed. This church and the conservation area are generally integrated within a central London context where scale differences are an established part of the character of the area.

The impact is over some distance and partly filtered.

In the HTVIA we concluded the setting impact would be neutral, i.e. not materially changing the ability to appreciate the architectural interest of the church, and we commend that finding to you. HE's finding overlooks the actual setting context.

In terms of the view from the Seven Dials (Covent Garden) Conservation Area, see again HTVIA View 9. We make a similar point: views within and out from this conservation area reflect its central London location, and a setting that includes many buildings of a similar scale to what is proposed.

HE's analysis here is, we submit, incorrect.

Benefits

We comment later on the way HE treats the weighing up of benefits from a policy perspective (which is wrong).

In the 'Summary' on page 1, HE states: *"The heritage benefits presented as part of the scheme are not clearly linked to the proposal, and that the lack of a true restoration of the auditorium within the building limits the heritage value of a return to theatre use"*.

HE's treatment of benefits is expanded at page 6, where it questions *"whether repair works are tied to this scheme, or whether any proposal or continued work would incorporate this work"*.

These comments are baffling. The application makes clear that the proposals include and comprise all repairs documented in the submission. No major redevelopment could possibly proceed without fixing the Regents Street Disease. Your authority can only give full weight to this aspect of the scheme.

On the same page HE lists in a single sentence the other benefits, which include reinstatement of lost or degraded features and naturally also the repair of the façade. The weight to be given to these are, the letter advises your authority, no more than modest.

This is perverse because the repairs in question are to the main façade and features of the building, the ones highlighted in the new description as being principal features of interest. As a matter of logic, their reinstatement and restoration must attract significant weight taken together with the Regents Street Disease repairs.

Theatre Reinstatement

HE invites your authority to give no particular heritage weight to the reinstatement of the original theatre use of the building because it is not 'true'. By this it is clear they mean the fact that the original auditorium is not created exactly as it was originally but is located below ground.

This comment is apparently made without reference to the technical information by Charcoalblue, specialist theatre designers, supporting the resubmission.

The work by Charcoalblue explains that forming a theatre in the original box would create a small auditorium with very little front of house and poor back of house and ancillary accommodation. Nor would it have the flexibility or adaptability of the theatre proposed, which is also demonstrated in the submission material.

A theatre in the original box would not, therefore, attract interest from modern operators because it would not provide for a financially viable theatre.

The lack of market interest would render such proposals undeliverable, and even if they were to come forward, they would not be able to secure the long-term conservation of the heritage asset because they are not financially sustainable in the medium- to long-term.

HE says, in effect, your authority should not give the reinstatement of a historic use any real weight in the balance because it is not done accurately, according to the original. Such a reinstatement would not be practical or viable. Accordingly, HE is dismissing the possibility of any new theatre use being introduced because what HE would support is not deliverable. This is an unrealistic position to take.

HE overlooks the fact that the historic theatre box was partly underground in the first place, and that there are a number of West End Theatres which are set below ground, such as the Dorfman Theatre at the National Theatre, the Criterion and the Linbury Theatre in the Royal Opera House.

They also do not consider that the enhanced arrival/entrance to the theatre, through the restored entrance, represents any meaningful reinstatement of the experience.

We consider this overlooks the way in which theatre goers actually experience arrival. Once inside a theatre, one looks for the ticketing office, the bar and facilities and then you find your seat. The experience here, of entering through a restored entrance and getting to the theatre will be seamless and pleasant and in fact that is why Cirque du Soleil are so attracted to the site.

3. Policy Matters

HE's approach to the decision-making process and policy is incorrect in two respects.

First, in respect of the proposed theatre use, HE advises that the further information package supporting the amended applications does not assess whether another combination of uses could be viable. See page 2, paragraph 5.

Your determination of the applications can only be based on the benefits and disbenefits of the scheme before you. That is the only basis for the justification of less than substantial harm (which HE identify).

The suggestion that less weight can be given to the theatre use because no less damaging alternative has been tested has no basis in policy, and it would be wrong to give that any weight in the decision-making process.

Second, HE advises you that the presented heritage benefits are of *"an extent which could weigh heavily against the harm"*, but do not in this case because, they advise, the proposal do not comprise a *"conservation-led scheme"*.

There is a strange comment and again not supported by policy in the NPPF.

The weight to heritage benefits is not discounted on any basis at all. Paragraph 215 of the NPPF advises that benefits can justify less than substantial harm, and the balance is only engaged where there is harm. The idea that benefits only get full weight when there is no harm (the implication of a 'conservation-led scheme') is contrary to the purpose of the relevant national policy.

Again, in determining these applications your authority would be wrong to interpret paragraph 215 in the way HE invites you to interpret it.

4. Historic England's Remit

Finally, HE recommends that your authority either refuse the application or advise the Applicant to withdraw it on the basis of their identification of a high level of less than substantial harm (on a net basis, taking benefits and harms into account).

Leaving aside our disagreement with the level of harm (which is ultimately a matter of your authority's planning judgment), HE has no competency in the attribution of weight to the land use planning benefits which these proposals undoubtedly deliver.

They have no authority in other words to advise you to refuse any application since they have no ability to look at matters beyond heritage.

The application materials describe the planning benefits which these proposals deliver. These are set out in the *Planning Statement* (Montagu Evans, February 2025), for example, at section 8 on page 38.

Conclusion

We conclude, therefore, that HE's assessment does not correctly assess the impacts and effects of the proposals because they overstate the importance of listed building attributes which are respected by the proposals and understate the weight to be given to benefits.

HE also incorrectly applies paragraph 215 of the NPPF.

They additionally seek to direct your authority to refuse, advice which is plainly not within their remit or competency.

For these reasons, which we consider need to be reported to members, we invite your authority not to give full weight to the HE advice.

Yours truly,

MONTAGU EVANS LLP

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Copied to:

- Lloyd Lee, Yoo Capital
- National Planning Casework Unit