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DECEMBER
2019

Statement of Case

135-149 Shaftesbury Avenue, London WC2H 8AH

Iceni Projects Limited on behalf of
Capitalstart Ltd

18th December 2019

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ON BEHALF OF
CAPITALSTART LTD

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1. INTRODUCTION

1.1 This appeal is made on behalf of Capitalstart Limited against the delegated decision of London Borough of Camden to refuse planning application reference 2017/7051/P and listed building consent reference 2018/0037/L dated 5th July 2019.

1.2 The appeal relates to development at 135-149 Shaftesbury Avenue, London WC2H 8AH (the site). The description of development for the refused applications is as follows:

The comprehensive refurbishment of the existing Grade II listed building and the provision of a new two storey roof extension and new basement level, providing a new four screen cinema (Class D2) and spa (sui generis) as basement levels, a restaurant/bar (Class A3/A4) at ground floor level, a 94-bed hotel (Class C1) at part ground and first to sixth floors and associated terrace and bar (Class A4) at roof level, together with associated public realm and highways improvements.

1.3 Fourteen reasons for refusal are quoted on the Decision, which is provided in full at Appendix 1. The three substantive reasons for refusal are as follows:

1. The proposed rooftop extension, by reason of the proposed height, mass, detailed design and materials would compromise the form, architectural character and historic interest of the host listed building, and in combination with the change of its main use to a hotel, would result in less than substantial harm to the significance of the host listed building and nearby surrounding Seven Dials and Denmark Street Conservation Areas, contrary to policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.
2. The applicant has failed to demonstrate that the proposed development would ensure the provision of the maximum reasonable amount of replacement cultural or leisure facilities within the scheme contrary to Policy C3 (Cultural and leisure facilities) and Policy D2 (Heritage) of the Camden Local Plan 2017.
3. The applicant has failed to provide sufficient information to demonstrate that the proposed roof top plant would operate in accordance with the Council's minimum noise and vibration standards and that that all plant, when operating at full capacity, would be capable of doing so without causing noise disturbance and harm to the local residential environment , contrary to policies A1 (Managing the impact of development) and A4 (Noise and vibration), of the London Borough of Camden Local Plan 2017.

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- 1.4 It is noted that an informative is placed on the Decision Notice stating that reasons for refusal 4-14 could be overcome by entering into a S106 legal agreement. This Statement of Case will therefore focus on Reasons for Refusal 1-3.
- 1.5 A copy of the Decision Notice is provided at **Appendix 1**. A copy of the Officer's Delegated Report is provided at **Appendix 2**.

2. SITE AND SURROUNDINGS

- 2.1 The appeal site is located at 135-149 Shaftesbury Avenue, London WC2H 8AH. It is an island site of 0.12 hectares in size, bordered to the north by New Compton Street and Phoenix Gardens, to the east by St Giles Passage, to the south by Shaftesbury Avenue and to the west by Stacey Street. Surrounding development is varied in age and is made up of a range of land uses, including residential, retail, hospitality, leisure and office.
- 2.2 The site is occupied by the former Saville Theatre building which is Grade II listed. It is not located within a Conservation Area; however the Denmark Street and Seven Dials conservation areas are located immediately to the north and south of the site respectively. The full listing description is provided at **Appendix 3**.
- 2.3 The site is located in an area of excellent public transport accessibility, benefiting from a public transport accessibility level (PTAL) of 6B.
- 2.4 The appeal building is currently in use as a four-screen cinema (Use Class D2), having been converted to a twin cinema in 1970 and to a four-screen cinema in 2001. Customer access to the site is through the main entrance on Shaftesbury Avenue, with staff access and servicing and deliveries made to the rear of the building via access from New Compton Street.
- 2.5 A full planning history for the site is provided at **Appendix 4**, and a more detailed assessment of the site's context is provided within the application documentation.

3. CHRONOLOGY

Pre-Application – September 2016 to December 2017

- 3.1 Initial concept proposals were discussed with LB Camden officers in September, October and November 2016, with formal written advice provided by LB Camden on 2 December 2016. The proposals were for the redevelopment of the site involving part demolition of the building and erection of a 6-storey roof extension, plus newly formed basement level 3, to accommodate a sui generis use (a theatre and/or multi-functional arts venue); an 128 bedroom hotel (Class C1) and bar (Class A4). This pre-application advice confirmed that the principle of the proposals, including the loss of the cinema, were acceptable subject to a replacement leisure facility of a similar floorspace. Concern was raised as to the requirements of a theatre on this site due to the requirement for a fly tower and how this may impact on the proposed hotel and bar uses. At paragraph 6.4 of the advice LB Camden confirm that the provision of hotel rooms were likely to be considered acceptable in principle.
- 3.2 At paragraph 7.7 of the pre-application advice, LB Camden noted that the re-provision of a theatre or cinema at the heart of the scheme and within the historic building's principle floors and volumes is critical to conserving its special interest.
- 3.3 With regard to the extent of the roof extension, the advice stated that "it seems likely to be possible to accommodate two to three storeys set-back behind the parapet at full width, subject to successful design, which may be fairly simple in form and materiality". The advice also stated that "it may be possible to accommodate significant additional height at roof level asymmetrically, not across the full area". A copy of LB Camden's full advice is provided at **Appendix 5.1**.
- 3.4 Following further design development undertaken in the context of the December 2016 pre-application advice a formal Planning Performance Agreement (PPA) was signed between the Applicant and LB Camden on 22 May 2017. The PPA covered both the pre-application and post submission until determination phases of the project. A copy of the PPA is provided at **Appendix 5.2**.
- 3.5 In line with the PPA, 6 x additional pre-application consultation meetings were held with LB Camden between April 2017 and November 2017. The following key outcomes occurred throughout this pre-application process:

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- 3.6 **The scale of the roof extension** – initial proposals for an asymmetric 9 storey extension (April/May 2017) above the parapet were reduced to an asymmetric 5.5 storey extension (June 2017), an asymmetric 3 storey extension (August 2017) and ultimately a full-width setback 3 storey extension (October 2017). These concessions were made on the specific advice of officer and the applicant’s minutes of these meetings is provided at **Appendix 5.3**. Formal pre-application advice from September 2017 is provided at **Appendix 5.4**.
- 3.7 **Viability/conservation deficit** – when reducing the overall scale/quantum of development, officers acknowledged that the building was in conservation deficit and required a minimum amount of enabling floorspace to be provided to make the proposals viable.
- 3.8 **Materiality** – as the height and form of the extensions changed over the course of pre-application discussions, a range of material options were considered, including metal cladding, stone cladding, clear glazing and fritted glazing, with the latter ultimately selected for the scheme that was submitted.
- 3.9 **Land use** – initial pre-application proposals sought consent for a hotel and theatre space, however officers requested that a replacement cinema be provided within the development, despite this not being a specific policy requirement and the site benefiting from an open Class D2 planning permission.
- 3.10 A number of additional meetings with key stakeholders were held during the pre-application process in October, November and December 2017, including:
- Cllr Danny Beales (Cabinet Member for Planning) and Cllr Jonathan Simpson (Cabinet Member for Culture) who were both broadly supportive of the objectives of the scheme.
 - Amy Lame (GLA’s Night Czar) who was supportive of the scheme’s benefits to the night time economy.
 - A range of local amenity groups, including the Covent Garden Community Association, Phoenix Gardens and Soho Housing.
- 3.11 A public exhibition was held on 4 and 5 December 2017, which invited local residents and businesses to attend. A total of 10 people attended. Further details regarding the engagement activities for the application are provided within the Statement of Community Involvement which accompanied the planning application.

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- 3.12 The planning and listed building consent applications were submitted on 22 December 2017.

Post Submission – January 2018 – present

- 3.13 The applications were validated on 10 January 2018 and given reference numbers 2017/7051/P and 2018/0037/L.
- 3.14 **Design Review Panel** - the scheme was presented to LB Camden Design Review Panel on 2 February 2018. Officers asked the panel to comment on the height, scale and form of the roof extension, as well as the extent of internal works to the listed building. The panel confirmed that the proposed height and scale of the roof extension was on-balance acceptable and of an appropriate height, however they requested that the fritted glazing of the roof extension be simplified and that further openings were provided at ground floor level to improve the development's relationship with the public realm. The panel also requested that an additional entrance be provided to the building for use of the cinema, the original armature reinstated to its original designs and asked for further information on the operation of the restaurant. A copy of the panel's advice is provided at **Appendix 5.5**.
- 3.15 **Statutory Consultation Feedback** - An initial review meeting was held with officers on 5 February to discuss the feedback from statutory consultees. Officers had a number of comments regarding the overall functioning of the scheme. The Applicant agreed to prepare an Operational Management Plan and a schedule of Draft Schedule Planning Conditions, which would demonstrate how all of the uses within the development could operate in harmony.
- 3.16 A consolidated set of drawings, together with the Operational Management Plan and draft Schedule of Planning Conditions and draft commercial agreements with the hotel and cinema operators, was submitted to the Council on 14 March 2018. This package responded to other comments from consultees including inclusive design, secure by design and highways.
- 3.17 A meeting was held with LB Camden's Economic Development Officers on 16 March 2018 to discuss how the scheme could provide apprenticeships and work experience positions during the operation of the development. Relevant officers were supportive of the scheme and noted they would be happy to work with the Applicant to ensure apprenticeships could be provided for local residents both during the construction and operational phases of the development.

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- 3.18 LB Camden's Independent Viability Assessors, BPS, were appointed on 5 February 2018, with their report received on 19 March 2018. A meeting was held to discuss the findings of this report on 2 April 2018 with representatives of BPS, the Council and the Applicant. The results from this assessment confirmed that the scheme would ordinarily not be viable and acknowledged the Applicant's unique position that would allow them to carry out the development. The report also confirmed that the quantum of development was the minimal amount of enabling floorspace needed to provide a long-term future to the listed building. The report also noted that the condition of the building would continue to deteriorate in future and that if nothing was done now, an even greater amount of enabling development (i.e. additional floorspace) would be needed for a viable scheme. A copy of the BPS report is provided at **Appendix 5.6**.
- 3.19 **Design Review Panel** - the revised scheme was presented at a second Design Review Panel Meeting on 13 April 2018. The format of the meeting was a Chairs Review. The Chair confirmed that the revisions to the design of the roof extension were an improvement and also noted the benefits provided by the additional openings at ground floor, the projection of the original auditorium on the inside of the front elevation and the reinstated bronze armature. The Chair requested that further detail was provided regarding how the glazed extension would appear at the corners, how the floorplates would be visible and how the glazed extension would meet the parapet of the existing building, and noted New Court, the Rothschild Bank Headquarters in the City of London as a comparator showing an appropriate and well-designed glass box extension. This information was provided to the Chair following the meeting on 20 April 2018. In the subsequent written advice, the Chair concluded that the Council could make its own assessment on whether the comments had been addressed. A copy of the minutes from the DRP Meeting is provided at **Appendix 5.7**.
- 3.20 LB Camden officers confirmed on 3 May 2018 that the scheme did not need to go back to the Design Review Panel. This email correspondence is provided at **Appendix 5.8**.
- 3.21 A meeting was held with LB Camden on 1 May 2018 to assist the case officer in finalising their reporting to the Major Case Conference on 17 May 2018 and for Planning Committee. It was confirmed that officers were working towards having the scheme determined at the 28 June 2018 Planning Committee.
- 3.22 Officers wrote to the Appellant's representatives on 23 May 2018 and noted that they still had unresolved concerns with the application. These concerns were stated as follows:

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- The design of the extension and associated alterations are considered to harm the special architectural and historic interest of the building.
 - The less than substantial harm caused would not be outweighed by the limited public benefit stated by the applicant.
 - The necessity for works which result in less than substantial harm has not been sufficiently demonstrated
- 3.23 Officers stated that they wanted to see a marketing strategy undertaken to demonstrate why no additional cinema operator would be willing to occupy the building in its current condition, or why no additional cinema operator would be willing to refurbish and occupy the building. Officers also stated that they wanted an independent heritage review commissioned to review the current condition of the building to assist in forming a view on whether the scale of intervention works were needed and whether the interior of the existing building possessed any existing building fabric.
- 3.24 In officers' email of 23 May 2018, it was confirmed that if the above work was carried out in the spirit of the PPA, this would help officers to be able to recommend the application for approval. A copy of this email correspondence is provided at **Appendix 5.9**.
- 3.25 On 13 June 2018, the Applicant agreed to commission the additional heritage review, however did not agree to carrying out marketing, noting that a modern 4 screen cinema was being provided as part of the mixed-use development and the proposal were thus policy compliant.
- 3.26 Officers acknowledged via email on 28 June 2018 that a marketing exercise may not be required and that the Council would instruct the independent heritage consultant, at the Appellant's expense. A copy of this email correspondence is provided at **Appendix 5.10**.
- 3.27 The Brief for the independent heritage consultant was agreed on 7 July 2018 between the Applicant and LB Camden. A copy this brief is provided at **Appendix 5.11** and agreement from officers is provided at **Appendix 5.12**.
- 3.28 Quotes were received from two firms, Hutton + Rostron and Dr Duncan Phillips (Listed Building Surveys). The Appellant agreed on 27 July 2018 to Dr Duncan Phillips to carry out this work given his expertise in matters such as this. The deadline for the report to be issued was 27 August 2018.

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- 3.29 The Appellant's representatives understood at this time that the independent heritage review was the only outstanding matter and that subject to an acceptable response from the independent heritage review the applications would be recommended for approval.
- 3.30 Officers noted via email on 31 August 2018 that officers were targeting the applications to be determined at the 20 October 2018 Planning Committee. A copy of this email is provided at **Appendix 5.13**.
- 3.31 Dr Duncan Phillips issued his report on 4 September 2018. The conclusions from this report confirmed that there was nothing of any historic significance remaining internally within the building, that rear and side elevations of the building had limited historic significance and confirmed that the historic and special interest of the building is only associated within the front façade. It concluded that the project would not cause any harm to the listed building, subject to the front façade being preserved. A full copy of the report is provided at **Appendix 5.14**.
- 3.32 Officers confirmed via telephone on 11 September 2018 that they believed the report did not address the brief in full and requested that Dr Phillips update his report. Officers requested this directly to Dr Phillips via email on 11 September 2018. A copy of this email is provided at **Appendix 5.15**.
- 3.33 Dr Phillips provided his revised report on 25 September 2018. The report's conclusions did not change from its previous issue, with Dr Phillips providing more explicit language confirming that there were no issues from a heritage perspective in his opinion. A copy of the updated report is provided at **Appendix 5.16**.
- 3.34 The Appellant's representative wrote to LB Camden on 25 September 2018 asking for confirmation that the application could be determined at the 18 October Planning Committee given that Dr Phillips' report addressed their previous concerns in full. This email is provided at **Appendix 5.17**.
- 3.35 On 27 September 2018, officers contacted the Appellant's representative via telephone and stated that the applications would be refused under delegated powers. Officers acknowledged that Dr Phillips' report resolved the heritage concerns but that they still had concerns with the detailed design of the roof extension and considered this to cause harm. Officers confirmed that the Design Review Panel formed an advisory function only and that in making a decision on the application, officers were following the advice of the Council's design and conservation officers.

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- 3.36 On 28 September 2018, the Appellant's representative wrote to officers, noting that they had followed the advice of officers throughout the pre-application and post submission process with the expectation that this would lead to a recommendation for approval. The Applicant also requested a meeting with senior members of the Council to discuss the matter in more detail. A copy of this email is provided at **Appendix 5.18**.
- 3.37 A meeting was convened on 30 October 2018 with the Council's Head of Planning, Manager of Major Applications, Application Case Officer, the Appellant and the Appellant's planning, heritage, design and viability representatives. At this meeting, officers confirmed that their concerns were in relation to the height, scale and design of the roof extension and the harm this would cause to the listed building. A number of questions from officers were also answered in relation to the proposed cinema and hotel operators. Officers stated at the meeting that they were intending to refuse the application and would confirm their final view within one week of the meeting.
- 3.38 The Applicant's representative circulated a draft set of meeting minutes to officers on 5 November 2018 requesting that officers confirm that this was an accurate reflection of the meeting. No response to this was received from the Council, however a copy of the Appellant's minutes is provided at **Appendix 5.19**.
- 3.39 On 13 November 2018, Officers wrote to the Appellant's representative and acknowledged that the extent of floorspace proposed would be viable, however they noted that they were uncomfortable supporting this scale of extension from a design and heritage perspective. They requested, in the spirit of the PPA, that the Applicant re-engage with officers to explore alternatives for the design of the roof extension as well as provide officers with some additional comfort on why the current tenant was leaving as well as additional information on the proposed cinema operation. A copy of this email correspondence is provided at **Appendix 5.20**.
- 3.40 Following this, the Appellant's representative replied to Officers on 22 November 2018 and set out the mixed use approach to land uses within the proposed development, the rationale behind the proposed cinema operation and also set out the context by which the Appellant would be willing to engage in further design discussions. A copy of this email correspondence is provided at **Appendix 5.21**.
- 3.41 On 17 December 2018, Officers wrote to the Appellant's representative requesting that the building's current tenant provide further information regarding the current business operations on site and their future relocation plans. They also noted that they would be happy to speak to the tenants of the building directly. With regard to the context of design discussions, Officers noted that senior design and planning officers would not

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- be involved and all design discussions would be progressed by the design officer allocated to the applications. A copy of this email correspondence is provided at **Appendix 5.22.**
- 3.42 On 4 January 2019, the Appellant's representative wrote to Officers specifically detailing that the current building has an open Class D2 permission, meaning that the cinema use of the building could be ceased at any time and replaced with an alternative D2 use, and provided further information as to why the current tenant of the building was departing in the short term. Finally, it was requested that Officers provide their final view on land use matters on the application. If officers were willing to accept the land use case for the application, then the Appellant would be willing to enter into further design discussions. A copy of this email correspondence is provided at **Appendix 5.23.**
- 3.43 On 16 January 2019, Officers wrote to the Appellant's representative and confirmed that on balance, officers would accept the land use position regarding the application and were willing to work with the Appellant to resolve the one substantive issue with the application - design. Officers also stated that they would update the PPA noting that a likely Planning Committee date for the application would be 11 April 2019. A copy of this email correspondence is provided at **Appendix 5.24.**
- 3.44 A meeting was held between the project architect and the Council's conservation and design officer on 28 January 2019 to discuss the roof top design in more detail. An email was subsequently sent to planning officers on 29 January 2019 in order to agree the outcomes of the meeting. It was agreed that officers would have a further internal design review and amended proposals should be put before the DRP before reporting anything to committee. A copy of this email correspondence is provided at **Appendix 5.25.**
- 3.45 A response was sent from the Appellant's representative on 12th February 2019, acknowledging their comments and seeking confirmation that any land use issues were now resolved for the purposes of the current proposals.
- 3.46 A detailed response was received from the council on 13th February 2019. This stated that there were still concerns around the proposed design of the roof top extension but that they did accept the principle of a scaled down cinema provided that it was solidly backed by an experienced operator. Officers stated continued scepticism about the level of works required to save the building and the need for the proposals to secure its future. Further information on any alternative proposals which could also secure the long term future of the building was requested. A copy of this email correspondence is provided at **Appendix 5.26.**
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- 3.47 The Appellant responded to this email on 14th February 2019 asking that the planning application and listed building consent be decided on the basis of the information provided to date. Camden confirmed that they would be refusing the applications. A copy of this email correspondence is provided at **Appendix 5.27**.
- 3.48 On the 19th February 2019 a meeting was held between the Appellant's representative and Cllr Danny Beales who subsequently confirmed by email that Camden were willing to continue to work with the Appellant's team to resolve the design issues. A copy of this email correspondence is provided at **Appendix 5.28**.
- 3.49 An email was subsequently sent to Camden from the Appellant's representative on 26th February requesting that the applications not be determined and offering the appointment of an executive architect to work up a revised design approach. This was acknowledged by return of email which also noted that a new planning officer would take over the project. A copy of this email correspondence is provided at **Appendix 5.29**.
- 3.50 Discussions picked up between the Appellant's representative and the new case officer via email on 19th March 2019. The case officer noted a further representation from The Theatres Trust which noted that a number of credible theatre operators had come forward for the site and requesting a full marketing exercise to be completed. The case officer also noted comments on the normal commitments of an occupier to maintain a building and requested a copy of the existing lease to assist in assessing this. A copy of this email correspondence is provided at **Appendix 5.30**.
- 3.51 Lease information was provided to Camden on 20th March 2019 by the Appellant's representative. A copy of this email correspondence and lease information is provided at **Appendix 5.31**.
- 3.52 The Appellant's representative spoke to the case officer via telephone in order to arrange a meeting to discuss the lease and the land use issues. This was followed up via email on the 25th March and the 1st April.
- 3.53 Concurrently the Appellant's Viability Consultant was contacted by Camden's own Viability Consultant with a request for additional lease information to enable them to revisit their original assessment of the Viability case. It was agreed via email on 1st April that a meeting would take place once the updated Viability review was completed. A copy of this email correspondence is provided at **Appendix 5.32**.

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- 3.54 The updated Viability Review was forwarded to the Appellant’s representatives by LB Camden on 24th May. The conclusion of the review was that information provided did ratify the need for enabling development but it didn’t discount the possibility of a theatre use being a viable alternative use – although without any financial information from a theatre operator or any offers on the table BPS noted that it was not possible to assess this. A copy of the Viability Review is provided at **Appendix 5.33**.
- 3.55 The case officer confirmed via email dated 24th May 2019 that the information had been passed to her senior officer and that she needed to discuss with them before providing more detailed feedback. A copy of this email correspondence is provided at **Appendix 5.34**.
- 3.56 On the 3rd June 2019 the Appellant’s representative received an email from the case officer stating that Camden intended to proceed with refusing the planning applications on the basis of design and land use. A copy of this email correspondence is provided at **Appendix 5.35**.
- 3.57 Copies of the decision notices and the officer’s Delegated Report were received by the Appellant’s representative on 5th July 2019.
- 3.58 The extent of this chronology demonstrates the great lengths that the appellant went to in order to reach a consensus with Camden. Notwithstanding all these efforts Camden ceased negotiations in June 2019 and both the planning and listed building consent applications were subsequently refused.

4. PLANNING POLICY

4.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) requires that decisions on planning applications must be made in accordance with the policies and proposals in the Development Plan, unless material considerations indicate otherwise.

4.2 The Development Plan relevant to the proposed development is comprised of:

- The London Plan (2016)
- Camden Local Plan (2017)
- Camden Planning Guidance (March 2018 and March 2019)

The Development Plan is also influenced by the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG), both of which are material considerations in the determination of an application.

Full extracts of the relevant policies are provided at **Appendix 6**.

5. THE CASE OF THE APPELLANT

- 5.1 This section explains the appellant's grounds for appeal comprising the case in favour of the development and in response to the reasons for refusal. As noted in Section 1 this Statement of Case will concentrate on Reasons 1-3 on the understanding that Reasons 4-14 can be dealt with via a S106 legal agreement.

The Development Plan

- 5.2 The development accords with the development plan and should therefore be approved in accordance with Section 38(6) of the Planning and Compulsory Purchase Act.
- 5.3 The following paragraphs demonstrate how the proposed development complies with the policies in the development plan.
- 5.4 **Policy G1** (Delivery and location of growth). The proposed development would make the best use of the site, introduce a mix of uses that would help support the ongoing growth of Camden's Central London area and would secure the long-term future of a Grade II listed building.
- 5.5 **Policy C3** (Cultural and Leisure Facilities). The development re-provides a purpose built, modern 4 screen cinema of a greatly improved standard to the existing cinema.
- 5.6 **Policy E3** (Tourism). The development delivers a 94-bed hotel in accordance with the aims and objectives of this policy.
- 5.7 **Policy TC1** (Quantity and location of retail development). The proposed development would introduce new town centre uses (Class A3 and A4) to one of the borough's Central London frontages, in line with policy.
- 5.8 **Policy TC2** (Camden's centres and other shopping areas). A mix of uses to contribute to the vibrancy and vitality of Camden's Central London Area would be provided by the proposed development.
- 5.9 **Policy TC4** (Town Centre Uses). The proposals contribute to the vitality and vibrancy of Central London through the provision of a mix of town centre uses.
- 5.10 **Policy H1** (Maximising Housing Supply) and **Policy H6** (Housing choice and mix). The proposed development does not propose any housing on site, the Council's land use

priority, as justified by the viability case presented with the proposals. The scheme complies with the principles of mixed-use development approach consistent with the Council's policies (refer to Policy C3, E3 and TC4) for new commercial and tourism uses within the central London area of the borough.

- 5.11 **Policy H2** (Maximising the Supply of Self-Contained Housing from Mixed-Use Schemes). In accordance with the provisions of Policy H2 the proposals are unable to provide housing on site due to the constraints of the existing Listed Building. A contribution to off-site housing cannot be achieved due to viability constraints. This position has been ratified by Camden's own consultants, BPS.
- 5.12 **Policy H4** (Maximising the supply of affordable housing). The proposed development has demonstrated through viability evidence that it would not be viable to deliver affordable housing on site, off site or through a financial contribution. This position has been ratified by the Council's independent consultants, BPS.
- 5.13 **Policy E1** (Economic Development). The development will make provision for construction employment, apprenticeships and training initiatives via a S106 Legal Agreement in compliance with this policy.
- 5.14 **Policy E3** (Tourism). The proposed development would provide a new five-star hotel in a highly accessible location within Central London.
- 5.15 **Policy D1** (Design) and **Policy D2** (Heritage). The proposals would result in some harm to the listed building as a result of the introduction of development above the 'theatre box' formed by the existing facades and fly tower of the building, this harm is outweighed by significant public and heritage benefits arising from the scheme, leading to an 'on balance' conclusion of overall enhancement to the heritage asset arising as a result of the scheme. The detailed design, materials and massing of the extension above the 'theatre box' would also generate a high-quality extension to the listed building, and this design mitigates in principle perceived harms to significance arising as a result of this extension.
- 5.16 **Policy D3** (Shopfronts). The proposed development would see the reinstatement of the existing shopfront/façade to the building, achieving a high level of design.
- 5.17 **Policy T1** (Prioritising walking, cycling and public transport) and **Policy T2** (Parking and car-free development). The proposals would be car free and would activate the ground floor frontages of the building which would encourage users of the building to travel to the site by active and public transport means.

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- 5.18 **Policy T3** (Transport Infrastructure). The proposed development would not impact any strategic transport infrastructure projects and it would also encourage users of the development to use active transport means to the site through the provision cycle parking.
- 5.19 **Policy T4** (Sustainable movement of goods and materials). A detailed servicing and delivery strategy has been developed for the scheme in consultation with the Council's Highways officers. This would ensure the development would not have an unacceptable impact on the surrounding transport and road network.
- 5.20 **Policy C1** (Health and wellbeing). The proposed development would contribute to the Council's strategic objective of creating high quality, active, safe and accessible places by improving street level surveillance, encouraging active and public transport travel to the site and ensuring the development would be accessible to all users.
- 5.21 **Policy C5** (Safety and security). The proposed development has been designed following the principles of secure by design and has included specific measures required by the Council's Secure by Design officer.
- 5.22 **Policy C6** (Access for all). The proposed development has been designed to be fully accessible, ensuring the building meets the standards of accessible and inclusive design so it can be used safely, easily and with dignity by all.
- 5.23 **Policy A1** (Managing the impact of development). The proposed development has been informed by daylight, sunlight and overshadowing analysis which confirms that the development would not result any in adverse impacts on surrounding residential properties.
- 5.24 **Policy A2** (Open Space). The proposed development would not result in any unacceptable overshadowing of Phoenix Gardens to the north of the site. Additionally, the scheme is likely to encourage greater usage of Phoenix Gardens through greater pedestrian activity generated by the proposed development.
- 5.25 **Policy A3** (Biodiversity). The use of bird and bat boxes on the proposed development would seek to improve biodiversity outcomes on site.
- 5.26 **Policy A4** (Noise and Vibration). Noise from the proposed development has been considered within a Noise Impact Assessment, which considered the noise and vibration impact from plant and the rooftop bar on surrounding properties. The report concluded that the rooftop bar would not result in impacts to the amenity of surrounding residential

properties and defined the maximum dB levels for all rooftop plant to meet, in order to comply with the Council's policy.

- 5.27 **Policy A5** (Basements). The proposed basement extensions on the proposals have been detailed within a Basement Impact Assessment (BIA). The BIA was externally reviewed by the Council's independent experts, Campbell Reith, who confirmed that the construction of the proposed basement would meet the Council's policies.
- 5.28 **Policy CC1** (Climate change mitigation) and **Policy CC2** (Adapting to climate change). The proposed development would incorporate a variety of sustainable development measures and technologies that would help the development adapt and mitigate the impacts of climate change.
- 5.29 **Policy CC3** (Water and flooding). The proposed development has been designed to minimise the extent of runoff from the site and incorporates a greywater harvesting scheme to minimise the development's water demand.
- 5.30 **Policy CC4** (Air Quality). The proposed development would be air quality neutral, with the use of mechanical ventilation ensure future occupiers would be protected from the existing poor air quality along Shaftesbury Avenue.
- 5.31 **Policy CC5** (Waste). A dedicated refuse and recycling area that meets the Council's standards has been provided within the proposed development.
- 5.32 **Policy DM1** (Delivery and monitoring). The proposed development would be liable to Camden Community Infrastructure Levy (CIL) allowing the Council to continue to provide the necessary community infrastructure within the local area.

Other Material Considerations

The NPPF and Presumption in Favour of Sustainable Development

- 5.33 The development comprises sustainable development in that it contributes to the economic, social and environmental roles of development. As such it benefits from the presumption in favour of sustainable development set out in paragraph 14 of the NPPF. When making a decision on the development this means that, as it accords with the development plan, it should be approved without delay.

Reason for Refusal 1

- 5.34 The first reason for refusal alleges that the height, mass, detailed design and materials in combination with the change of main use to a hotel would result in less than

substantial harm to the significance of the host listed building and the significance of the surrounding Seven Dials and Denmark Street Conservation Areas, through affects arising to their settings.

- 5.35 The Planning (Listed Building and Conservation Areas) Act 1990 sets out at section 66 that a decision-maker should have “special regard to the desirability of preserving the building or its setting”. The Court of Appeal in *Barnwell Manor Wind Energy Ltd v E.Northants DC, English Heritage, National Trust & SSCLG [2014] EWCA Civ 137* established that this means that “considerable importance and weight” should be given to the preservation of listed buildings and their setting, which in this context means causing no harm. Similarly, the NPPF, at paragraph 193, states that, ‘When considering the impact of a proposed development on the significance of a designated heritage asset [in this instance, listed buildings and conservation areas], great weight should be given to the asset’s conservation. This ‘great weight’ provision has been held, through *Jones v Mordue [2015] EWCA Civ 1243 (03 December 2015)* to reflect the statutory duty within Section 66(1) of the 1990 Act.
- 5.36 It is submitted that not only is no harm caused to the heritage asset, but that the significance of 135-149 Shaftesbury Avenue overall will in fact be enhanced as a result of the proposals.
- 5.37 There has been no suggestion made by the Council or its independent heritage consultant at any point, despite the lengthy and detailed delegated report considering the applications, that the condition of the building is in any way to do with deliberate neglect or damage by the Appellant. It is therefore entirely appropriate, as per paragraph 191 of the NPPF, to consider the current condition of the listed building when assessing the appeals’ overall heritage case.

Height, Mass, Detailed Design and Materials

- 5.38 135-149 Shaftesbury Avenue, originally constructed as a theatre and converted to a multi-screen cinema in 1970, is listed at Grade II, and is therefore recognised to be a designated heritage asset of national importance. Its significance, however, must be understood within the context of its listing date (1998), and its condition at that point, following the almost total removal of its 1930s interiors.
- 5.39 The key elements of the building’s significance are restricted to its exterior, with some elements being more significant than others. This view was ratified by an independent professional review of the application by Duncan Philips (Chartered Building Surveyor) specifically instructed in this case by the London Borough of Camden.

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- 5.40 The design was developed in close consultation with Camden's Design Officer over an extended period. A series of significant changes were made to the proposals through an extensive pre-application process.
- 5.41 The purpose of the proposed interventions was to enhance this listed building. Interventions include a revisioning of the arched window that was lost to the building in the early 1970s, returning this elevation as a focal point of the Shaftesbury Avenue frontage as well as refurbishing the other decorative features of the main facade, including the frieze and roundels by Gilbert Bayes. These interventions have been expressly recognised by the Council (paragraph 2.32 of its delegated report) as direct positive heritage benefits of the proposals.
- 5.42 The proposed contemporary intervention at roof level, in the context of the enhancements to the host building, has been designed to complement the existing building.
- 5.43 The chosen materials and the limited number of joint lines allow the roof extension to appear as a veil which complements the weighty and grounded mass of the existing brick building. The intention was to create an element that was clearly discernible as a new intervention. The architectural language was endorsed by Camden's Design Review Panel Chair's Review by referencing a similar building as a comparator. The nature of the new intervention in the context of the significance of the host building means that any impact is indirect.
- 5.44 The proposed development will result in the following effects on the building's significance:
- Removal of internal fabric from the listed building (Neutral);
 - Introduction of carefully designed and located new openings to the building's external facades (Neutral);
 - Repair and consolidation of the Bayes Frieze and roundels (Beneficial);
 - Reinstatement of original recessed "poster boxes" to Shaftesbury Avenue façade (Beneficial);
 - Reopening of the arched window over the main entrance (Beneficial);

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- Exposure of the building's internal front wall, and its decoration with a full-scale section derived from Bennett's drawings, showing the location and scale of the now-lost auditorium (Beneficial);
 - Structural works to the building as part of the proposed new development, which will serve to arrest and redress structural failings associated with the cutting out of the original internal built form (Beneficial);
 - The introduction, through the massing of the new internal form of the building, of a roof extension of two and a half storeys, above the building's existing parapet level (Harmful).

5.45 It is submitted that these works, when considered together as is appropriate, lead to a clear, balanced judgement of enhancement of, rather than harm to, the significance of the designated asset.

Hotel use

5.46 The Council suggests at paragraph 2.56 of its delegated report that "*The building's use and contribution to the music and entertainment scene contributes to the building's special interest, and the loss of leisure floor space and its removal from the building's principal floors is considered to cause harm to its special interest. Although a four screen cinema is proposed within the basement, the primary function of the building within the proposals is as a hotel, fundamentally altering the character of the listed building*".

5.47 It is submitted that the hotel is not in fact the 'main' use and rather forms part of a considered mix of commercial and cultural uses which interplay to contribute to the vitality and viability of the development and its surrounding area. It is submitted that the proposed mixture of uses, far from causing harm to the special interest of the building, will serve, as a whole, to better contribute to the building's special interest as a building designed for entertainment, and historically possessing a lively 'West End' atmosphere. The mix of uses proposed will reintroduce this character, which has been lost under the current cinema use.

5.48 The hotel rooms have a specific use. However, all other areas of the building respond to the need for cultural and leisure uses consistent with the building's location and work together to create dynamic destinations that are not specific to the hotel use and can be enjoyed as independent destinations or in combination. The vision for this building is that the whole will be greater than the sum of its parts. Care will be taken for each area

to reference the rich and multi-layered history of the building, as it responds the current needs and enters a fourth chapter in its life.

- 5.49 Planning permission for the conversion of 135-149 Shaftesbury Avenue to a cinema was granted in 1970 and the building has been in use as a cinema since. At the time of listing (1998) few surviving features remained internally, with any significance entirely connected to exterior elements of the building. The building had been in use as a cinema for almost 28 years and while the building's former use and contribution to the music and entertainment scene clearly makes a contribution to its significance, the current cinema use in its existing expression makes a neutral contribution to its special interest, given its subdued physical form and character. Moreover, the introduction of a mix of viable uses enables an on-going cinema operation at the site whilst contributing to the special interest through the considered approach to ground floor uses, signposting the building's historic use.
- 5.50 The combination of uses proposed is consistent with the listed building's character. The hotel use, in particular, supports the regeneration of the 'spirit of place'. It will produce activity and liveliness through its mix of uses. It will not generate a physical intervention which is harmful or inappropriate.
- 5.51 Evidence will be given to show how the way people use hotels and therefore their contribution to culture and leisure environments has evolved significantly in recent years. Where previously hotel ancillary facilities were often used in a limited way these ancillary areas are now vital, animated destinations, being effectively public spaces.
- 5.52 The hotel and ancillary hotel uses, when combined with the other multiple uses such as cinema, bar and restaurant will enhance the offer and dwell time, reinforcing each use and ensuring that they successfully overlap. A hard line between designated uses has become obsolete. The proposal ensures a true mix of uses.
- 5.53 The vision is for the entire ground floor of the building to be a dynamic, thriving destination throughout the day. The design responds to this need. The grand arched doorway, faithfully refurbished, will be reborn as an entrance into a social space, echoing the famed bars of the original theatre. A grand artwork will be etched and embossed onto the inner wall of that space, describing the section of the original theatre. A number of different "rooms" without walls will be loosely defined based on a hierarchy of formality and privacy, allowing guests to enjoy them throughout the day, without the threshold anxiety often instilled by a dominant, transactional hotel reception point. A grand staircase will sign the ongoing journey to the cinemas in the same way that the audience was led to the basement stalls and stalls bar of the original theatre.

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- 5.54 This new destination will bring much needed energy and life to an under-achieving part of London's West End, and will be worthy of this world famous leisure and culture destination.
- 5.55 It is also noted that in the context of Local Plan policy E3 the site, is considered to be an appropriate location for a new hotel use.
- 5.56 The proposed level of hotel floorspace is necessary to deliver a viable scheme. If the quantum of other uses were to be increased the hotel would need to be larger. This proposal represents the minimum amount of commercial use to secure the retention of leisure facility on site.

Impact on Listed Building

- 5.57 The beneficial effects outlined above outweigh any identified harmful effects, particularly as many of the beneficial effects are associated with key elements of the building's significance. Even if it were to be found that the works resulted in a degree of harm to the listed building, the proposed mix of uses generates a clear further heritage benefit by providing the building with a viable use, which will secure the building's future conservation, and remove the risk of further structural and decorative deterioration into the future. Cumulatively, therefore, it is the view of the appellant that the proposed development enhances the significance of the listed building in the context of the statutory duty to leave the heritage asset unharmed. The Courts have been very clear (see *Palmer v Herefordshire Council and Anr [2016] EWCA Civ 1061* and *Bohm v. SSCLG [2017] EWHC 3217 (Admin)*) that the decision-maker should assess an entire proposal when considering whether harm is caused to a heritage asset.
- 5.58 Accordingly, it is the appellant's view that the scheme does not represent a conflict with either the statutory duty on the Council under Sections 16(1), 66 or 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act, or with any heritage policy in the statutory development plan.
- 5.59 It is settled law that enhancement itself is not required by the Planning (Listed Building and Conservation Areas) Act 1990 – section 66 refers only to the preservation of Listed Buildings and their setting (unlike s72 which refers to the *preservation or enhancement* of conservation areas).
- 5.60 The independent heritage report on this proposal commissioned by the Council stated in clear and explicit terms that “*from a heritage point of view, the proposed project does not impact on the significance of the historic interest in the building*”. The Council has not criticised this conclusion in its delegated report (though it did take issue with other

parts of the heritage report). Indeed, the Council's own delegated report stated at paragraph 2.51 that one of the independent report's conclusions was that "*The proposals seek to retain the external elevations, and thus will conserve the significance of the heritage asset*".

- 5.61 It is clear that the Council's own evidence therefore stated that the relevant statutory test was met. For this reason alone much of the first reason for refusal is entirely unsustainable. Furthermore, the conclusions of *Barnwell* in relation to the need to give 'considerable important and weight' to harm to heritage assets, must necessarily also mean that such weight should also be afforded, in the inverse of this situation, to enhancements to heritage assets, as they serve to increase the special interest of listed buildings. Accordingly, it is submitted that the enhancement of heritage assets that would arise from the scheme should weigh heavily in favour of a grant of consent'

IMPACT ON SIGNIFICANCE OF CONSERVATION AREAS

- 5.62 It is the view of the appellant that the proposed development will lead to a neutral impact on the significance of the setting of neighbouring Denmark Street and Seven Dials Conservation Areas. In each case, these heritage assets have well-defined extents, being focused around specific historic elements of the townscape. Their settings do not contribute strongly towards their significance, as is often the case for urban conservation areas; they are of note largely for their exclusion from these Areas, and for forming part of the wider mesh of urban fabric that surrounds them.
- 5.63 While the Site is visible from within both Conservation Areas, it does not make a strong contribution towards either Area's significance. The proposed development, being well designed and considered, and not having an significant effect on the primary built form of the existing building, will not have a significant appreciable impact on views from within and around Conservation Areas, being of a lesser scale than the building's immediate neighbours, and of an architectural form and design that is in keeping both with the existing building and the wider urban context.

LESS THAN SUBSTANTIAL HARM

- 5.64 If, however, the decision-maker judges on an internal heritage balance that harm is caused to the designated asset or to the setting of either Conservation Area, any such harm (a) could only be at the very bottom end of less than substantial and (b) would be outweighed by the scheme's public benefits.
- 5.65 In addition, the only public benefit explicitly set out in paragraph 196 of the NPPF is "securing [the asset's] optimum viable use".

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- 5.66 It is submitted that the proposals secure the optimum viable use of 135-149 Shaftesbury Avenue, on the basis that they represent the least harm to the asset whilst securing a use which will be viable on an ongoing basis.
- 5.67 The proposals constitute no more development than is necessary to secure the building's future, whilst also securing an on-going cinema use at the site. Evidence provided with the planning application demonstrates that the quantum of hotel, restaurant, bar and spa floorspace required to deliver a replacement cinema, is the minimum amount of enabling development needed in order to cover the cost of the original building's renovation. The proposed mix of uses would give rise to the minimal amount of intervention and alteration to the existing listed building when compared to other uses. These conclusions were endorsed by the Council's independent Viability Assessors, BPS, and specialist surveyor and heritage advisor, Dr Duncan Phillips.
- 5.68 The development proposals were developed in the context of the current structural failings of the building and the significant costs associated with securing its repair, giving extensive consideration of the viability of the building for ongoing commercial entertainment use. The scheme looks to balance heritage needs and conservation, planning and design policy and the key viability requirements to ensure both the long-term use of the site and the viability and vitality of this section of Shaftesbury Avenue.
- 5.69 It is clear that maintaining the current use of the building in its current form would not be viable and could not therefore be the optimum viable use. This was agreed by the Council's Viability consultants Bespoke Property Services as evidenced in their report to the council dated 20th March 2018.
- 5.70 The purpose of optimum viable use is to ensure that an asset will be viable in the long term in order to forestall a "series of failed ventures [which] could result in a number of unnecessary harmful changes being made to the asset" (as per the Planning Practice Guidance)
- 5.71 Whilst the proposed use is only objectively marginally viable, it is one which, as per the Planning Practice Guidance, will "lead to the investment in [...] maintenance necessary for [...] long-term conservation".
- 5.72 The proposed use is deliverable, due to the Appellant's unique status as (a) as an owner/operator of the property (b) a highly successful owner and operator of leisure facilities, including hotels, restaurants and spas with (c) a long history of restoring listed buildings (refer to **Appendix 7**).

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- 5.73 Supporting letters have been obtained from Sofitel and the Big Picture (refer to **Appendix 8**), who confirm that the hotel and cinema elements would be sustainable on an ongoing basis and that they wish to enter into formal discussions with regard to these elements of the proposal.
- 5.74 An opinion has also been obtained from the Appellant's auditors, which confirms that the Appellant's group of companies would be able to sustain the asset whilst waiting for it to become viable (refer to **Appendix 9**).
- 5.75 With regard to other uses, the Council has not identified any other viable or deliverable use. Nonetheless, viability exercises have been carried out by the Appellant, which demonstrate that no other uses would be viable, and that the provision of other alternative uses such as residential, would result in more harm to the significance of the listed building than the proposed mix of uses. This is due to the need to introduce new openings in the existing façade, most notably the front elevation which holds significant heritage interest.
- 5.76 The range of alternative uses to the submission schemes that may create less than substantial harm to the listed building that have been considered are as follows:
- Theatre Use – the indicative rents that a Theatre operator may be prepared to support for a fully fitted out building, dependent on the terms of any lease could be in the order of £1.6million. In that context, given development costs of redevelopment, including finance and fees of £54.5 million, reconversion to a theatre is not a viable use. Full analysis of theatre use is set out below.
 - Gym/Leisure Use – the indicative capital values that a Gym operator/Leisure centre may be prepared to pay would be in the order of 5,980 and 4,640 per sq off Prime yields for Gyms are reported at between 4.5% and 5.8%. Demand for a Gym as a large space user is limited with the largest Gym in London being 3,331 sq m and a rateable value of £75.00 per sq m (6.97 psf) from 2017; rents for Gyms being quoted at between £161-£270 per sq m (£15 psf - £25 psf); given the quantum of space it is anticipated that rent would be at the lower end of this range. The breadth of the range would equate to a Gross development value value of between £12 and £19 million with an indicative cost based on new build costs and head line abnormals (Demolition of £4.5 million) which indicates a loss of between £10m and £19 million.
 - The capital values are not sufficient to enable a Gym to be viable given the construction costs. We note that similar scales of Leisure facilities that the Council provide require capital support in relation to building use and therefore this is not a viable use. Further detail will be given in evidence.

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- Office Use – The space could physically offer an office use with a lower requirement for natural daylight; as alternative work practices are developed consideration of the building as office space is appropriate. Indicatively the space would be single aspect unless a lightwell were formed through the core of the building, significantly reducing the net to gross area. Assuming a net to gross floor area of 75% to allow for circulation, structure and cores and assuming 3.5 floors with a gross internal area of 792 per floor with a net area at 600 sq m per floor would generate a net internal area of 2,099 sq m. Based on a capital value of in the region of £17.2 million due to the limited daylight potential into the building, compromised storey heights to reflect existing openings and smaller floor plates which will be less appealing to a premium occupier. A 50% discount has been applied to prime rents alongside a 9 month marketing period reflecting the reduced tenant pool. The construction costs are assumed to be upper quartile as new build to reflect the complexity of the scheme. On this basis the proposed use of the building as offices not viable. Further detail will be given in evidence.

5.77 Given the operational capacity of the owner the proposals represent the optimum viable use of the listed building in heritage terms, which should be included as a public benefit when assessing the scheme.

5.78 Should the Inspector rule that the proposals do not represent the optimum viable use of the building, it is submitted that, as per paragraph 196 of the NPPF, any identified harm to the heritage asset is still outweighed by the scheme's public benefits, including:

- Introduction of a new, viable mixture of uses into the building;
- The reintroduction of lively, entertainment-focused activity to the Site and its immediate setting;
- Extending and refurbishing the building to deliver development plan policy through the retention of a D2 use on site made viable by supported by other appropriate town centre uses. The benefits of this approach can be maximised through the role of the single applicant freeholder to ensure the strategy is designed and executed on a site wide basis;
- The delivery of a sustainable mixed-use development commensurate with the key location of the site within the heart of the West End and the CAZ;

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- Enhanced public realm, including increased pavement widths to the front of the site;
 - Improved access and servicing arrangements;
 - Introduction of active frontages and improved permeability into the site;
 - Provision of a replacement cinema, designed as fit for purpose for the needs of modern cinema audiences;
 - Provision of additional hotel accommodation which will contribute to the local economy through both visitor spend and employment generation;
 - Provision of a mix of uses to complement the cultural offer of the area, including the nearby 'Tin Pan Alley' and the emerging cultural hub at St Giles Circus;

CONCLUSION

5.79 With regard to the first reason for refusal, therefore, the appellant concludes as follows:

- a. This is a listed building.
- b. The main façade is the primary value in heritage terms.
- c. The building is falling into disrepair (but this is not as a result of deliberate neglect).
- d. The building needs a new life.
- e. The scheme enhances or at least causes no harm to the heritage asset (and this latter point has been stated in terms by the Council's independent review of the heritage case).
- f. If any harm is caused, it can only be at the bottom end of less than substantial harm, which is outweighed by the scheme's public benefits (which are not limited

to just the optimum viable use and which would outweigh the harm even if the scheme is not the optimum viable use).

- g. The existing use is not viable to carry out the repairs required, refurbishment or redevelopment of the building.
- h. Any other use or mix of uses would not be viable and in many cases would cause more harm.
- i. The optimum viable use of the property is a cinema and this level of hotel, with restaurant and spa use.
- j. The other public benefits would also outweigh the harm caused.

Reason for Refusal 2

- 5.80 The second reason for refusal states that the applicant has failed to demonstrate that the proposed development would deliver the maximum reasonable amount of replacement cultural or leisure facilities within the scheme.
- 5.81 By way of introduction, it is noted that there is no requirement within Policy C3 for the maximum reasonable amount of replacement cultural floorspace to be provided. Policy C3 deals only with circumstances where it may be acceptable for a facility to be lost or re-provided. Even in that latter circumstance, the test is not whether the maximum reasonable floorspace will be provided, but that “it should be at the same or better standard than the facility which is lost and accessible to its existing users”.
- 5.82 The Council’s second reason for refusal is therefore entirely misconceived, and not based on the requirements of its own policy.

Planning Policy Context

- 5.83 Local Plan policy C3 is concerned with cultural and leisure uses falling under D2 of the Use Classes Order, or Sui Generis. Policy C3 seeks to protect cultural and leisure facilities and where there is a proposal involving the loss of a cultural or leisure facility, it must be demonstrated to the Council’s satisfaction that there is no longer a demand for that use.
- 5.84 It is the Appellant’s contention that the proposals are entirely in accordance with Policy C3, as the leisure facility is not being lost. In addition the case for the loss of the existing facility is not that there is no demand, rather that there is no demand for the cinema as

it currently exists. As such the policy reference to the loss of a cultural or leisure facility is not relevant to the planning case.

5.85 Policy C3 deliberately refers to *facilities*, not to *floorspace* (unlike many of the Council's other policies concerning loss of use such as residential and office space which specifically refer to floorspace). There is therefore clear scope within policy for a facility to be replaced (particularly if it is to be enhanced) without being considered to be lost for the purposes of the policy. This is precisely what is being proposed in this case.

5.86 Policy C3 also notes that it may be practicable exceptionally for a cultural or leisure facility to be reprovided on site through redevelopment and in such cases the Council will take the following into account:

- i) The impacts of the re-provision on the existing occupier and users of the facility;
- ii) Changes in the mix of uses arising from the loss of the existing cultural/leisure facility;
- iii) The loss of cultural heritage and
- iv) The affordability of the new facility.

5.87 The proposals constitute a re-provision of the facility within the provisions of Policy C3, and the need to preserve and bring back into use the listed building should be considered an exceptional circumstance which allows this.

5.88 The existing property is in a poor state of repair and the current cinema operation is underperforming. The existing leisure use does not contribute to the significance of the listed building nor to the surrounding area, and has no long-term viable future. Indeed, if the current unviable operation was to continue, this Grade II listed building would inevitably fall into further disrepair.

5.89 A specialist cinema offer is required to boost performance in this location, however the capital costs of refurbishment, in excess of £26 million, are very significantly in excess of the capital value of any cinema which would result. The existing cinema operation is failing, and cinema operators do not achieve anywhere near enough the level of income or profit to secure the necessary refurbishments and repairs to secure the future of this listed building. This is explained further in the ICO Consultancy Report prepared by Independent Cinema Office (ICO) which explored the options for retaining a cinema as the primary use on site (refer to **Appendix 10**).

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- 5.90 The proposed mix of uses will contribute to the on-going operation of a cinema in this location through the provision of a fit for purpose leisure facility of a much higher standard than the existing facility, complemented by interrelated town centre uses. The supporting letter from a specialist cinema consultant emphasises that “a cinema proposal on this site as you describe would be a valuable addition to the local offering” and that “your proposed cinema offering would be a sustainable one, and in time would become a highly valued part of Camden’s overall cinema offering, in contrast to the current Odeon on site”.
- 5.91 The replacement four-screen cinema is proposed as a ‘second viewing cinema’ with new films purchased for screening following the initial run of screenings. The money saved from this process is then recycled into premium seating, premium food and beverages and premium services. As such there will be no loss of a cultural or leisure facility as a result of the proposals, rather there will be an enhanced replacement facility provided as part of a mixed-use scheme which is necessary to secure the optimum viable use of this Grade II listed building.
- 5.92 The existing cinema use does not meaningfully contribute to the historic significance or civic importance of the existing building and there will be no loss of cultural heritage as a result of the development. Indeed the replacement cinema would be accessed at basement level in the same way the Shaftesbury Theatre was accessed, with a grand staircase leading down from ground floor level. CGI images of the journey into and through the site from ground to basement level are provided within Section 5 of the Design and Access Statement submitted in support of the application.

Alternative cultural or leisure use

- 5.93 If notwithstanding the above it is found that there would still be a loss of a leisure facility under Policy C3, it is submitted that there is no viable prospect of alternative leisure or cultural use at the site.
- 5.94 No marketing evidence was supplied with the application with regard to alternative uses. However, as the application meets the policy test with regard to the re-provision of a community facility of a better standard, marketing of the new facility was not required under policy.
- 5.95 In addition, as can be seen from the detailed chronology at section 3 and from a proper analysis of the planning history, this was not requested by the Council, who confined all requests for marketing (which were themselves eventually withdrawn in June 2018) to alternative cinema operators. Paragraph 3.5 of the Council’s adopted planning guidance explicitly states that a marketing exercise would be required “*unless the Council*

confirms in writing that this is not required'. The Council confirmed in writing on 28 June 2018 that no marketing exercise would be required, so the policy is satisfied.

- 5.96 However, as a rational landowner and because now the Council is alleging a lack of marketing based on the representations from the Theatres Trust and informal approaches from theatre groups during the determination period, the Appellant has sought to ascertain whether such interest would genuinely be viable.
- 5.97 As the building formerly housed a theatre, the potential redevelopment as a theatre would be an appropriate use in the context of the elements that are significant to the listing of the building.
- 5.98 To assist any marketing exercise, the Appellant in summer 2019 instructed Charcoalblue to determine the physical capacity of the structure to deliver a modern London West End style theatre or an alternative theatre style use. Whilst the original Saville Theatre had an indicative capacity of 1,400 seats, with current fire regulations and enhanced seating requirements, a new theatre would only have a capacity of some 1,000 seats. A copy of this report is provided at **Appendix 11**.
- 5.99 A potential theatre option based on the above was costed by Gardiner and Theobald (G&T). The report, which will be analysed further at proofs of evidence stage as needed, concludes that in total the construction cost plan indicates that to create a shell with seating and base infrastructure would by itself be in the order of £42m.
- 5.100 In addition, professional fees of 19% have been added from a recommended allowance for professional fees by G&T of 18% to 20%; arguably, given this is a listed building as well and a façade retention proposal, which is inherently more challenging than a new build, fees may be even more significant. In addition allowances have been made for developer contingency (covering for example construction warranty insurance premiums, constraints to working conditions (due to proximity of residential buildings), professional fees excluding the construction design contingency, highways and other licences, delivery abnormalities and other exclusions to the construction cost plan.
- 5.101 The Charcoalblue report identifies the probable Earnings Before Interest Tax Amortisation and Depreciation (EBITDA) that a West End Theatre operator may generate from their assessment of likely income and operational costs set out in their report. Even if all the EBITDA were utilised to pay rent or to service property construction costs (which is unrealistic) the value of the theatre on a rentalised basis at a yield akin to a cinema (10%) to reflect the risk associated with a performing arts venue would be in the order of £14.8 million, potentially up to £19.3 million based on

comparable sales. Therefore, theatre use would not be close to viable when reflected against the cost of redeveloping the property into a theatre.

5.102 It should be noted that any offer for theatre use would need to enable a financially viable scheme to be brought forward – viability is specifically mentioned in the Council’s Planning Guidance, so as to ensure the long-term future and safety of community facilities. The Guidance requires work “that considers the ability of the premises or site to accommodate alternative cultural or leisure uses” – the purpose is therefore clearly to ensure that any prospective purchase is a viable one.

5.103 It is considered that in order for an offer on the basis of a going concern to be considered genuinely viable for these purposes (and notwithstanding that the EBIDTA figure suggests that theatre use would in any event be unviable on an ongoing basis), it must *at least* need to exceed the costs of redeveloping the property for theatre use (£54.5m) plus an amount in respect of the value of the land. Any offer for the property in its unconverted state would need to build this figure in to its overall seat value (meaning an initial value of £54,500 per seat not including the purchase price), which means a notional value of over £55,000 per seat even with a low purchase price).

5.104 Theatre transaction evidence is limited due to the low volume of sales. The following are noted:

- The Ambassadors Theatre 444 seats acquired on 19/12/2018 by the Ambassadors Theatre Group for £12 million. This implies a price per seat of £27,027 per seat.
- The Theatre Royal, Haymarket, 888 seats was acquired along with the production company by the Access Group and the in June 2018 for £45 million, indicates a value per seat of £50,675.
- The Victoria Palace, 1,482 seats which Cameron Mackintosh bought for about £26 million in 2014, giving a value per seat of £17,543 per seat.
- The Palace Theatre, 1,400 seats was bought by Nimax Theatres for approximately £20 million in 2012, which was an average of £14,286 per seat.

5.105 Based on the above, on a capital value basis the value per seat for a 1,000 seat West End theatre would therefore suggest a likely a price in the order of £14 -27 million for a more typical West End Theatre.

5.106 In this context the costs to bring the property forward for rent or sale to a theatre operator/production company are not considered to be viable. Whilst there is the remote

possibility of an asset being acquired by an operator for in excess of £50 million for a trophy asset, the Theatre Royal sale (a) included the acquisition of an established production company which is not the case here, (b) was considered by many in the market to be an outlier and not reflective of the theatre's true value, and (c) was described in the industry press as "not a price that makes any sense for someone looking to run the Haymarket in commercial theatre terms".

5.107 Nevertheless, formal approaches were made in November 2019 to a number of prominent theatre groups to ascertain (a) whether there would be any interest in the property, and (b) if so whether any offers made would be genuinely financially viable.

5.108 To date, only one offer has been received, which is being analysed by the Appellant. Preliminary analysis indicates that (a) no offer was received to purchase the refurbished property and (b) the offers to purchase the property in its present state and to rent the property subject to refurbishment by the Appellant would not make the theatre use viable, as would fall below the £55,000 value per seat required to off-set the refurbishment costs and land value.

5.109 No other formal offers have been received. Should any offers be received during the appeal process, they will be fully analysed in the Appellant's proofs of evidence.

5.110 As set out above, Iceni have also considered alternative social and community uses which demonstrates that these are not viable uses for the site.

Reason for Refusal 3

5.111 The third reason for refusal concerns noise and vibration from the proposed roof top plant. This is dealt with in the Statement of Common ground submitted in support of the planning appeal.

Reasons for Refusal 4 – 14

5.112 The Appellant agrees that these can be dealt with via a section 106 obligation however notes that the reasons for refusal include financial contributions to:

- Reason 4 - work place travel plan monitoring,
- Reason 6 - public highways works
- Reason 7 - pedestrian, cyclist and environmental improvements

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- Reason 9 - implementation support of a construction management plan and community working group),
 - Reason 10 - an Approval in Principle Report in relation to the basement works on the adjacent public highway) and
 - Reason 14 - a local employment and training package.

5.113 While the Appellant is willing to enter into a reasonable contribution in relation to each element noted to support such contributions, the Council has not indicated the level of financial contribution required to manage and mitigate the associated impacts of the proposed development as identified.

6. SUMMARY AND CONCLUSIONS

- 6.1 The site consists of a Grade II listed building, formerly the Saville Theatre and converted to a cinema in 1970, 28 years before its listing. As a result of the works in converting the former theatre into a cinema much of the original interiors have been removed and the key elements of the building's significance are restricted to its exterior, with some elements being more significant than others.
- 6.2 The current cinema use is failing and the listed building is in a poor state of repair. The proposals have been developed in this context with the purpose of enhancing this listed building.
- 6.3 It is thus submitted that not only is no harm caused to the heritage asset, but that the significance of 135-149 Shaftesbury Avenue overall will in fact be enhanced as a result of the proposals. Accordingly, it is the appellant's view that the scheme does not represent a conflict with either the statutory duty on the Council under Sections 16(1), 66 or 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act, or with any heritage policy in the statutory development plan.
- 6.4 In the event that the decision-maker judges on an internal heritage balance that harm is caused to the designated asset or to the setting of either Conservation Area, it is concluded that any such harm could only be at the very bottom end of less than substantial and this harm would be outweighed by the scheme's public benefits, namely that the proposal represents the Optimum Viable Use (OVU) for building in heritage terms. Should the Inspector rule that the proposals do not represent the optimum viable use of the building, it is submitted that, as per paragraph 196 of the NPPF, any identified harm to the heritage asset is still outweighed by the scheme's public benefits.
- 6.5 The second reason for refusal states that the applicant has failed to demonstrate that the proposed development would deliver the maximum reasonable amount of replacement cultural or leisure facilities within the scheme. It is noted that there is no requirement within the relevant Policy C3 for the maximum reasonable amount of replacement cultural floorspace to be provided. The Council's second reason for refusal is therefore entirely misconceived, and not based on the requirements of its own policy.
- 6.6 Notwithstanding this the appellant team have considered alternative uses for the site which concludes that either additional harm to the listed building would result or that the use is not viable for this site.

6.7 It is concluded that the appeal scheme will secure the OVU for this Grade II listed building whilst also providing a significant number of public benefits. As such there is strong case for the grant of planning permission and listed building consent.

6.8 Additionally, it is considered that the reasons for refusal numbered 3 to 14 can be addressed and dealt with via the Statement of Common Ground, the use of appropriate planning conditions and through a Section 106 legal agreement.

6.9 The appellant intends to call the following witnesses at the public inquiry to support the case:

- Planning
- Heritage
- Viability
- Architecture.

A1. APPENDIX 1 – DECISION NOTICES 2017/7051/P AND 2018/0037/L

A2. APPENDIX 2 – DELEGATED REPORT

A3. APPENDIX 3 – LISTING DESCRIPTION

A3.1 The Listing Description is as follows:

Name: FORMER SAVILLE THEATRE

List entry Number: 1271631

Grade: II

Date first listed: 01-Jul-1998

List entry Description

Former theatre, now cinema. Designed 1929-30, built 1930-1 by TP Bennett and Son for AE Fournier, theatrical impresario. Steel frame clad in red-brown brick with artificial stone plinth and sculpted frieze to front, and parapet round the building. Rectangular building, originally comprising a theatre on 3 levels, but converted in 1970 into 2 cinemas set one above the other and with large foyer and staircase. EXTERIOR: the elevation is particularly handsome. Rusticated stone plinth with band supports frieze by Gilbert Bayes depicting Drama through the Ages. Moulded band over, above which a blind facade of rusticated brickwork interrupted only by 5 pairs of roundel plaques, and a giant arch over the entrance, framed by simple stone banding with a flat keystone. The arch originally with bronze metal glazing, since 1970 tiled over. Simpler brickwork to side elevations and rear. INTERIOR: remodelled in 1970 and nothing of the 1930-1 work remains on view. The Saville Theatre is remarkable as a fine composition that incorporates architecture and sculpture with rare intelligence, and which fulfills Bayes' vision of a unity between the two arts. Bayes' frieze is one of the largest and most important works of public sculpture of its age, and won him the silver medal of the Institute of Sculptors for the best piece of applied sculpture of its year. It is 129 feet long and made from artificial stone. It consists of a frieze of dramatic players and dancers set between a broad curtain which is folded round the side of the building. It depicts from left to right: St Joan; the Chester players; St George; a Roman triumphal procession; Bacchanalian dancers; a Harlequinade in Comedia dell'arte costume; Shakespearean figures; figures from contemporary drama and (round the corner) a figure in Boer War uniform. The plaques above depict art of Egypt; Assyria; the Italian Renaissance; Medieval (initialled); Pompadour; Victorian period (signed); Elizabethan and Georgian.

Listing NGR: TQ2998081145

A4. APPENDIX 4 – FULL PLANNING HISTORY

A4.1 The relevant planning history for the subject site is as follows:

Application Reference	Description of Development	Decision	Date
LSX0005257	Alterations to form four screen cinema	Granted	20 February 2001
LS9904804	Internal alterations for refurbishment, including creation of new partitions and alterations to internal surfaces of walls including the provision of acoustic fabric to auditoria wall	Granted	26 October 1999
9157	The alteration to the elevations of Saville Theatre, 135 Shaftesbury Avenue, Camden, in connection with use as twin cinemas	Granted	7 October 1970

A5. APPENDIX 5 - PLANNING APPLICATION CORRESPONDENCE

A5.1 The following correspondence is provided from the chronology of events referred to in Section 3 of this Statement:

- Appendix 5.1 – Original Pre-Application Advice, dated December 2016
- Appendix 5.2 – Signed Planning Performance Agreement, April 2017
- Appendix 5.3 – Applicant Notes/Minutes from June 2017 Pre-Application Meeting
- Appendix 5.4 – Pre-Application Advice, dated September 2017
- Appendix 5.5 – First Design Review Panel Meeting Written Advice, dated February 2018
- Appendix 5.6 – BPS Viability Review, March 2018
- Appendix 5.7 – Second Design Review Panel Meeting Advice, dated April 2018
- Appendix 5.8 – Email from the Council dated 3 May 2018 noting scheme does not need to go back to the Design Review Panel
- Appendix 5.9 – Email from the Council dated 23 May 2018
- Appendix 5.10 – Email from the Council dated 28 June 2018
- Appendix 5.11 – Agreed Brief for Independent Heritage Review
- Appendix 5.12 – Email from the Council dated 10 July 2018 confirming Heritage Brief is agreed
- Appendix 5.13 – Email from the Council dated 31 August 2018 regarding October Planning Committee Meeting
- Appendix 5.14 – Dr Duncan Phillips' original Heritage Report
- Appendix 5.15 – Email from the Council dated 11 September 2018 regarding updates to the Heritage Report
- Appendix 5.16 – Dr Duncan Phillips' updated Heritage Report
- Appendix 5.17 – Email from the Appellant dated 25 September 2018

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- Appendix 5.18 – Email from the Appellant dated 28 September 2018
 - Appendix 5.19 – Draft Meeting Minutes, dated 30 October 2018
 - Appendix 5.20 – Email from the Council dated 13 November 2018
 - Appendix 5.21 – Email from the Appellant dated 22 November 2018
 - Appendix 5.22 – Email from the Council dated 17 December 2018
 - Appendix 5.23 – Email from the Appellant dated 4 January 2019
 - Appendix 5.24 – Email from the Council dated 16 January 2019
 - Appendix 5.25 – Email from the Appellant dated 30 January 2019
 - Appendix 5.26 – Email from the Council dated 13 February 2019
 - Appendix 5.27 – Email from the Appellant dated 14 February 2019
 - Appendix 5.28 and 5.29 – Email from Councillor Danny Beales dated 25 February 2019 and Email from Appellant dated 26 February 2019
 - Appendix 5.30 – Email from the Council dated 19 March 2019
 - Appendix 5.31 – Email from the Appellant dated 20 March 2019
 - Appendix 5.32 – Email from the Council dated 1 April 2019
 - Appendix 5.33 – Updated BPS Viability Review
 - Appendix 5.34 – Email from the Council dated 24 May 2019
 - Appendix 5.35 – Email from the Council dated 3 June 2019

**A6. APPENDIX 6 – RELEVANT PLANNING POLICY
EXTRACTS**

**A7. APPENDIX 7 – EVIDENCE OF APPELLANT’S UNIQUE
STATUS TO DELIVER THE PROPOSED DEVELOPMENT**

**A8. APPENDIX 8 – LETTERS FROM SOFITEL AND BIG
PICTURE**

**A9. APPENDIX 9 – LETTER FROM APPELLANT’S
ACCOUNTANTS**

**A10. APPENDIX 10 – INDEPENDENT CINEMA OFFICE
REPORT**

A11. APPENDIX 11 – CHARCOALBLUE REPORT
