**DRAFT STATEMENT OF COMMON GROUND**

**APPLICATION REFERENCES:** 2017/7051/P and 2018/0037/L

**SITE ADDRESS: 135-149 Shaftesbury Avenue London WC2H 8AH (the “Site”)**

**DESCRIPTION OF THE DEVELOPMENT**

*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) at 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*

**APPELLANT: Capitalstart Limited (“the Appellant”)**

**LOCAL PLANNING AUTHORITY: London Borough of Camden (“the Council”)**

This statement addresses the following areas of common ground:

1. Description of the site and area
2. Designations
3. Planning history of the site and the application
4. Development plan (including relevant policies)
5. Relevance of any supplementary planning guidance published by LPA
6. Relevant national policy
7. Evidence
8. Areas of agreement
9. Areas of disagreement
10. Conditions
11. Section 106 agreements
12. CIL
13. Description of the site and area
    1. The application site is located on the north side of Shaftesbury Avenue and comprises a standalone Listed building in use as a cinema (Class D2). Historically in use as the Saville Theatre (Class Sui Generis), the building fronts four streets, namely New Compton Street to the north, St Giles Passage to the east, Shaftesbury Avenue to the south, and Stacey Street to the west.
14. Designations
    1. The Site was first listed at Grade II in 1998.
    2. The site is not within a conservation area but adjoins the Seven Dials (Covent Garden) Conservation Area which covers the south side of Shaftesbury Avenue, and Denmark Street Conservation Area, which covers the north side of New Compton Street
15. Planning History of the site and the application

LSX0005257: Alterations to form four screen cinema. Granted 20/02/2001.

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 26/10/1999.

9157: The alteration to the elevations of Saville Theatre, 135 Shaftesbury Avenue, Camden, in connection with use as twin cinemas. Granted 07/10/1970.

1. Development plan policies and designations
   1. For the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004 the Development Plan for the London Borough of Camden comprises:
      1. The London Plan (2016)
      2. Camden Local Plan (2017)
   2. The Council has also adopted a number of Planning Guidance documents.
   3. The following Local Plan policies are relevant to this appeal

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| **Camden Local Plan (2017)** |
| Policy G1 Delivery and location of growth  Policy H1 Maximising housing supply  Policy H2 Maximising the supply of self-contained housing from mixed-use schemes  Policy H4 Maximising the supply of affordable housing  Policy H6 Housing choice and mix  Policy C1 Health and wellbeing  Policy C2 Community facilities  Policy C3 Cultural and leisure facilities  Policy C5 Safety and security  Policy C6 Access for all  Policy E3 Tourism  Policy A1 Managing the impact of development  Policy A2 Open space  Policy A3 Biodiversity  Policy A4 Noise and vibration  Policy A5 Basements  Policy D1 Design  Policy D2 Heritage  Policy D3 Shopfronts  Policy CC1 Climate change mitigation  Policy CC2 Adapting to climate change  Policy CC3 Water and flooding  Policy CC4 Air quality  Policy CC5 Waste  Policy TC1 Quantity and location of retail development  Policy TC2 Camden’s centres and other shopping areas  Policy TC4 Town centres uses  Policy T1 Prioritising walking, cycling and public transport  Policy T2 Parking and car-free development  Policy T3 Transport infrastructure  Policy T4 Sustainable movement of goods and materials  Policy DM1 Delivery and monitoring |

1. Supplementary Planning Guidance
   1. Camden adopted Planning Guidance

CPG Access for all (2019)

CPG Design (2019)

CPG Developer contributions (2019)

CPG Energy efficiency and adaptation (2019)

CPG Interim housing (2019)

CPG 2 Housing (May 2006 updated March 2019)

CPG Transport (2019)

CPG Water and flooding (2019)

CPG Amenity (2018)

CPG Biodiversity (2018)

CPG Basements (2018)

CPG Community uses, leisure facilities and pubs (2018)

CPG Planning for health and wellbeing (2018)

CPG Town Centres (2018)

1. National Policy

Both the National Planning Policy Framework and the Planning Practice Guidance are material considerations in the determination of this application. While none of the content can be dismissed as irrelevant, it is considered that specific parts of each one are particularly relevant as follows:

* 1. NPPF
     1. Paragraph 8, which defines ‘sustainable development’ as having three dimensions; economic, social and environmental.
     2. Paragraph 10 and the presumption in favour of sustainable development, which states that “For decision-taking this means: approving development proposals that accord with an up-to-date development plan without delay; or d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date7 , granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed ; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.
     3. Paragraph 92 which states that “To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments; b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community; c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs; d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services”.
     4. Paragraph 124 which states that “The creation of high quality buildings and places is fundamental to what the planning and development process should achieve”.
     5. Paragraph 131 which states that “In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings”.
     6. Paragraph 189 which provides guidance to applicants on the approach that should be taken to assessing the potential impact of a proposal on a Heritage Asset.
     7. Paragraph 192 which sets out the approach local planning authorities should take to determining planning applications that affect a Heritage Asset.
     8. Paragraphs 193-196 which advises on considering impacts on heritage assets and states that, when planning decision makers are considering the impact of a proposed development on the significance of a designated heritage asset, weight should be given to the asset’s conservation.
  2. PPG
     1. Paragraphs 007 and 008 (Reference ID: 18a-007-20190723 and 18a-008-20190723) and the guidance on ‘significance’ in terms of heritage;
     2. Paragraphs 15, 16 and 17 (Reference ID: 18a-015-20190723, Reference ID: 18a-016-20190723 and Reference ID: 18a-017-20190723) which provides guidance as to optimum viable use of heritage assets;
     3. Paragraph: 020 Reference ID: 18a-020-20190723 and the guidance on public heritage benefits derived from developments.

1. Evidence
   1. The Council intends to produce evidence in relation to the following areas:
      1. Planning
      2. Architecture and design
      3. Heritage and conservation
   2. The Appellant intends to produce evidence as follows:
      1. Planning
      2. Architecture and design
      3. Heritage and conservation
      4. Viability
2. Areas of Agreement

*Land use*

* 1. There is no in-principle objection to the creation of a new hotel, restaurant, bar and spa in this location.
  2. The proposed restaurant and bar are located within a mixed use area, and the introduction of new food and drink uses to the site would contribute to the vitality of the Central Activities Zone.
  3. Given the site’s inclusion within the Central Activities Zone, and its PTAL rating of 6b (the highest), it is considered an appropriate location for the introduction of a new hotel use;
  4. The proposed spa would be an acceptable use within the wider mix of uses;
  5. The introduction of residential floorspace would not make for the most practical use of the site;
  6. The Council’s Design Review Panel stated that it supported the principle of refurbishing the building as a hotel, on the clear proviso that an operational cinema could be retained;

*Heritage and design*

* 1. The former Saville Theatre is a Grade-II listed building, designed by Sir Thomas Bennett in 1929-30, with the theatre architect Bertie Crewe and incorporating work by the sculptor Gilbert Bayes;
  2. The building is steel framed, and clad in red-brown brick with an artificial stone plinth and frieze to the front. The setting of the frieze, echoed in the elevation by stone and brick banding and by the cornice and strong flat parapet line above, is of critical significance to the listed building’s special interest;
  3. In 1970 the building was converted from a theatre into two cinemas. The internal parts of the building contribute little to its significance;
  4. The Property is not in a state of good repair, and it would not be viable to repair and refurbish the building;
  5. The state of the Property is not due to deliberate damage or neglect on the part of the Appellant;
  6. A roof extension of this form and height, if sympathetically executed could be incorporated without significant harm to the listed building;
  7. The proposed repair and reinstatement works, including works to the frieze and the arched window, are direct heritage benefits of the proposal;
  8. Retaining the building in its optimum viable use would also be considered a public benefit;
  9. The proposed basement excavation would not harm the significance of the listed building;
  10. The Council’s Design Review stated that it accepted the height of the proposed extension, and that it “sees much to admire in the proposals”;
  11. The independent heritage report prepared by Dr Duncan Philipps concluded that:
      1. Purely from a heritage point of view, the proposed project does not impact on the significance of the historic interest in the building;
      2. I am satisfied that there is no conservation deficit from the proposed works and that the loss of historic fabric has already been caused by previous alterations to the building before the date of Listing. Therefore, the proposed development does not impact on the heritage asset and the extent of the proposals and the costs of achieving those proposals are not unreasonable when taking into account the logistics involved.
      3. Taking all of this into account, the proposed costs are not unreasonable estimates at this early stage – allowing for the reality that there are many variables that could cause costs to rise or fall as the project develops.
      4. As the proposed project does not cause harm to the remaining significance of the heritage asset, it can be reasonably justified on this basis.

*Viability*

* 1. It would cost around £10m to repair and refurbish the Property;
  2. BPS, acting on behalf of the Council concluded in their initial report that:
     1. The scheme is shown to be in deficit even when the benchmark land value is set as zero. It was initially unclear why the applicant is proceeding with the scheme on this basis given the unacceptable financial performance indicated. We understand that it is willing to proceed with the scheme in spite of this insufficient level of profit, due to the limited other options available to it in respect of this site. Following our review, we are in agreement with the overall conclusion that the scheme falls far short of a ‘break even’ position and therefore no additional planning contributions (including affordable housing contributions) can viably be delivered.
     2. Moreover, due to the nature of the disrepair to the building, the situation is likely to get worse over time as the building deteriorates further, thereby further compromising viability. This may in turn lead to a greater amount of ‘enabling development’ (i.e. additional floorspace) being required from the redevelopment, in order to cover the cost of the original cinema building’s renovation.
     3. The proposed scheme is necessary as a form of ‘enabling development’ whereby the additional floorspace and new uses are necessary to generate the revenues to cross-subsidise the refurbishment and improvement works to the cinema. Therefore the hotel development and ancillary food and spa facilities are necessary in order to generate these revenues;
  3. The Council has received informal expressions of interest from a number of theatre operators on the basis of a 1400-seat theatre.

*Other*

* 1. With appropriate conditions, the proposal would be acceptable on amenity grounds;
  2. The proposed basement would be acceptable, subject to a condition requiring details of the engineers overseeing the excavation and regarding flood resistance measures;
  3. With appropriate conditions and s106 contributions, the proposal would be acceptable in transport, energy, sustainability, flood risk, air quality, safety, refuse, and local employment terms;
  4. Reasons for refusal 4-14 could be overcome by entering into a s106 agreement (see Heads of Terms below);
  5. Reason for Refusal 3 could be dealt with by way of condition.

1. Areas of disagreement
   1. Whether the proposals would cause harm to the heritage significance of the Property, in terms of its form, architectural character, historic interest and main use, or whether the heritage asset would be reserved or enhanced;
   2. Whether the detailed design of the proposals is appropriate;
   3. Whether any harm would be caused by the proposals to the settings of the nearby conservation areas;
   4. If less than substantial harm is caused to the heritage asset(s)(which is itself disputed), whether such harm would be outweighed by the scheme’s public benefits, and in particular, whether the proposals would be the optimum viable use of the Property;
   5. Whether the current cultural/leisure facility would be lost as part of the proposals;
   6. If the current facility will be lost (which is itself disputed), whether the proposals provide the maximum reasonable amount of cultural/leisure floorspace;
   7. Whether alternative proposals would be viable at the site;
   8. Whether sufficient information has been provided 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.
2. Conditions

Draft conditions will be agreed in advance of any inquiry, with any outstanding disputes to be discussed at the inquiry itself.

1. Section 106 Agreement
   1. The following heads of terms have been agreed:
      1. workplace travel plan and financial contribution for travel plan monitoring;
      2. “coach-free” development;
      3. Financial contribution towards public highways works;
      4. Financial contributions towards pedestrian, cyclist and environmental improvements in the area;
      5. Servicing Management Plan for the commercial element;
      6. Construction management plan, community working group and an appropriate financial contribution towards implementation support;
      7. Approval in Principle Report and appropriate financial contribution towards an approval in principle for basement works under the public highway;
      8. Energy Efficiency Plan and renewable energy plan including the measures set out in the Energy Strategy;
      9. Carbon off-set contribution;
      10. Sustainability Plan including Design Stage and Post Construction stage BREEAM assessment reports and certificates;
      11. Local employment and training package.
   2. Both sides are confident that an agreed and completed version of the document will be submitted to the Inspector prior to the close of the inquiry.
2. Community Infrastructure Levy

The proposals would be subject to Council and Mayoral CIL

**Document List**

Legislation

Town and Country Planning Act 1990

Planning and Compulsory Purchase Act 2004

Planning (Listed Buildings and Conservation Areas) Act 1990

National Guidance

National Planning Policy Framework (2018)

National Planning Practice Guidance (Online)

Greater London Authority

The London Plan (2016)

Emerging London Plan

Camden

Camden Local Plan (2017)

CPG Access for all (2019)

CPG Amenity (2018)

CPG Basements (2018)

CPG Biodiversity (2018)

CPG Design (2019)

CPG Developer contributions (2019)

CPG Energy efficiency (2019)

CPG Interim Housing (2019)

CPG2 Housing (2016, amended 2019)

CPG Transport (2019)

CPG Trees (2019)

CPG Water and flooding (2019)

LBC CIL Charging Schedule