

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

**RULE 6 STATEMENT OF CASE
of the London Borough of Camden**

APPEAL SITE

135-149 Shaftesbury Avenue, London, WC2H 8AH.

APPELLANT

Capitalstart Limited.

SUBJECT OF APPEAL

Appeal Statement in Support of the Council's decision to refuse planning permission (ref: 2017/7051/P) and listed building consent (ref: 2018/0037/L) on 5th July 2019 for:

"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."

COUNCIL REFERENCES: 2017/7051/P & 2018/0037/L

**PLANNING INSPECTORATE REFERENCES: APP/X5210/W/19/3243781 &
APP/X5210/Y/19/3243782**

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1. SITE AND SURROUNDINGS

- 1.1 The existing building is seven storeys in height including a double storey basement and is currently in use as a four screen cinema (class D2), operated by Odeon. The building was originally constructed as the Saville theatre (Sui Generis), designed by Sir Thomas Bennett in 1929-30, with the theatre architect Bertie Crewe and incorporating work by the sculptor Gilbert Bayes. The building was first listed at Grade II in 1998.
- 1.2 The site is not located in a conservation area but sits in between the Seven Dials Conservation Area (to the south of the site) and the Denmark Street Conservation Area (to the north of the site). There are no listed buildings immediately adjoining the site, although there are a number of listed buildings in the nearby area, including the grade II listed Phoenix Theatre at 110 Charing Cross Road, approximately 50m to the north west of the site. To the north of the site, is the public open space of Phoenix Community Garden, designated Local Site of Nature Conservation Importance.
- 1.3 Please see the officer report for full description of site and surroundings and relevant planning history and this should be read as incorporated into this Statement of Case. It is provided at Appendix 2 in the Appellant's Statement of Case.

2. PROPOSAL

- 2.1 The appeal proposal seeks to refurbish the existing building to provide a new 94 room hotel (Class C1), a new four screen cinema at basement level (Class D2), a ground floor restaurant and bar (Class A3/A4), and a spa (Sui Generis). The proposals involve the demolition of the existing internal structures within the building, the retention of the existing facades, and the excavation of one new basement level. The proposed development would involve the construction of a new ten storey building, comprising three basement levels, five levels behind the retained façade, and a two storey roof extension with a smaller setback plant room/lift overrun storey at rooftop level with a bar and terrace area. Externally, the proposals include new openings to the rear and side elevations, repairs to the existing brickwork and decorative frieze, and the opening up of the arched window to the front elevation.

3. PLANNING POLICY FRAMEWORK

- 3.1 In determining the planning application the Council had regard to the relevant legislation, government guidance, statutory development plans, supplementary planning guidance and the particular circumstances of the case.

4. National Planning Policy Framework (NPPF)

- 4.1 The NPPF was published on 27th March 2012 and updated on 19 June 2019. The policies contained in the NPPF are material considerations which should be taken into account when determining planning applications in accordance with the Development Plan (see below). It provides a national planning policy framework against which all planning applications and decisions must be made. It sets out a presumption in favour of sustainable development.

Development Plan

- 4.2 The development plan for this application consists of the Camden Local Plan (2017) and the London Plan (2016).
- 4.3 A draft New London Plan (2019) has been published and is at an advanced stage, with the 'Intend to Publish' version issued to the Secretary of State on 9 December 2019. At the time of writing, the Secretary of State is anticipated to respond on 17 February 2020. When the new London Plan is issued, as is highly likely before the date of the inquiry, the Council's proof of evidence will respond to the new London Plan. The Council will seek to engage and agree with the Appellant ahead of the public inquiry which policies are relevant to the appeal.
- 4.4 The proposal fails to comply with a number of planning policies which are referred to in the reasons for refusal and officer's report as well as national policy and guidance set out in the National Planning Policy Framework (NPPF) and the national Planning Practice Guidance (NPPG). The LPA will present evidence as to the relevance of these policies in relation to the proposed development.
- 4.5 In its evidence, the LPA will draw on national, regional and local planning policy documents, including the NPPF and London Plan (as above, this will be required to be updated to the new London Plan).

Other material planning considerations

Supplementary planning documents (SPDs)

- 4.6 The Camden Local Plan 2017 is supported by the Council's SPDs which include Camden Planning Guidance (CPGs). The adopted CPGs relevant to this appeal are:
- 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)

Supplementary Planning Guidance (SPG) to the London Plan 2016

4.7 The Mayor's SPGs give further detail on certain policies found in the London Plan. Below is a list of the key relevant documents. Other relevant SPG may be referred to or issued by the Mayor:

- Culture and Night-Time Economy (2017)
- Affordable Housing & Viability (2017)
- Housing (2016)
- Central Activities Zone (2016)
- Social Infrastructure (2015)
- Accessible London: Achieving an Inclusive Environment (2014)
- Town Centres (2014)
- Character and Context (2014)
- Sustainable Design and Construction (2014)

4.8 The LPA may include other published national guidance documents and reports that may be considered appropriate during preparation of the Proofs of Evidence. The LPA intends to seek to agree these in any list / updated list in the Statement of Common Ground.

5. REASONS FOR REFUSAL

5.1 The Council determined the planning and listed building consent applications under delegated powers, and on 5 July 2019 refused planning permission and listed building consent for 14 reasons. The original decision notice and officer's report has been provided previously and is to be considered as attached again to this Statement of Case. It is not re-provided as it has previously been sent and it has been attached by the Appellants at Appendix 2 of their Statement of Case.

5.2 As per the informative on the original decision notice, the Council considers that it would be possible to overcome reasons for refusal 4-14 by entering into a suitably worded section 106 legal agreement. The Council aims to work with

the Appellant to agree a legal agreement to be concluded before the forthcoming public inquiry is closed. It may also be possible to overcome reason for refusal 3 through the submission of additional information. The Council will continue to engage proactively with the Appellant to narrow the issues of conflict with the appeal scheme and this will be set out in a Statement of Common Ground.

6. THE COUNCIL'S CASE

- 6.1 The proposal raised 14 Issues of concern which are discussed below. The Council's case is also set out within the officer's delegated report sent previously, which details the proposal, site and surroundings, the site history, consultation responses and an assessment of the proposal.
- 6.2 It would be possible to overcome reasons for refusal 4 – 14 by entering into a S106 legal agreement. Justification for why these matters must be secured via legal agreement is included below. The LPA will continue to work with the appellant where possible to overcome or narrow the reasons for refusal, and this will be set out in a Statement of Common Ground.

Reason 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.

- 6.3 The Council will demonstrate the significance of the host listed building through explaining the form, architectural character and historic interest of the host listed building, in combination with its use, and set out how the proposals would harm these essential characteristics, failing to preserve or enhance its significance.
- 6.4 The Council will demonstrate the significance of the two adjacent conservation areas, Denmark Street to the north and Seven Dials to the south, through explanation of their urban grain, architectural character, materiality and historic development, and will demonstrate how the proposals would harm the setting and consequently fail to preserve or enhance their significance.
- 6.5 The Council will demonstrate that the proposed development, as a result of the height, mass, detailed design and materials of the roof extension as well as the significant loss of cultural/leisure floorspace would have an adverse effect on

the character, appearance and significance of the building, as well as the character and appearance of the adjacent conservation areas.

- 6.6 As a result of the height and bulk of the proposed extension, the Council will show the development would result in a visually oppressive development which would dominate the existing building and its surroundings causing harm to their significance.
- 6.7 In terms of detailed design, the Council will maintain that the scheme fails to represent high quality, contextual architecture which would reflect and complement the unique character and historic significance of the building. In doing so, the Council will demonstrate that the proposed roof extension, almost wholly clad in fritted glass, would not relate to or respect the existing building, does not adequately allow for or consider the proposed hotel function within, nor the visual clutter that would arise from this use and the subsequent considerable impact on the visual finish and appearance of the extension. The evidence will show that this in turn would cause harm to the character and appearance of the building, local area, streetscene and adjacent conservation areas. The Council will maintain that the acceptability of any roof extension would be dependent on an exemplary design carefully considering the architectural character of the host building, its historic use, features of local distinctiveness and the wider context, in order to achieve a high quality development that integrates into its surroundings. The Council will outline the proposed scheme does not meet this standard of design.
- 6.8 The Council will demonstrate that the appeal proposal does not achieve sufficiently high quality design that would mitigate the impact of the additional height and massing, which is otherwise considered to be excessive in relation to the existing building.
- 6.9 The Council recognises that extensive changes were made to the proposals during pre-application negotiations with the Council's Conservation and Design Officers and following presentation to Camden's Design Review Panel (DRP) which were considered to represent an improvement on the originally submitted design; however, the Council maintains that the final iteration still was not considered to overcome the Council's, nor the DRP's concerns. Contrary to the appellant's assertion in paragraph 5.43 of their statement of case, the DRP did not endorse the architectural approach, but rather expressed a number of areas needing further thought to demonstrate the quality and viability of the design, and to be assured that the designs could work as envisioned.
- 6.10 It is noted that the Appellant states or implies at paragraph 5.60 of its Statement of Case that it considers the Council is not taking issue with the impact of the proposed project on the significance of the historic interest in the building. The Council disagrees, as Reason for Refusal 1 makes clear. The proposals harm the significance of the assets through their impact. The impact from the extension has been set out above which combined with the change of main use

to a hotel causes harm. The Appellant sets out at paragraph 5.46 the relevant paragraph of the Officer's Report which explains how the building's use contributes to the building's special interest and the loss of that space is considered to cause harm to its special interest and to fundamentally alter the character of the listed building. The Council will maintain that the existing cinema use does not simply make a neutral contribution to the building's significance, but rather, the importance of the building is significantly related to the main cultural use taking part on the principal floors of the building and the relationship with the historic interest of the host building and its location. It is acknowledged that incremental changes made to the interior of the building have affected the significance of the internal layout and historic fabric. Paragraph 28 of Historic England Good Practice Advice in Planning: 2 describes how the cumulative impact of incremental small-scale changes may have a great effect on the significance of a heritage asset. Where the significance of a heritage asset has been compromised in the past, consideration still needs to be given to whether additional change will further detract from significance of the asset. The guidance also notes that negative change could include severing the last link to part of the history of an asset. The Council will demonstrate that given the previous unsympathetic alterations to the interior of the building, the proposed development and relocation and reduction of the existing cinema function would harm the historic significance of the building.

- 6.11 The building is situated in a prominent location on Shaftesbury Avenue within London's iconic West End, which is renowned for its theatre and cinema venues of which the existing Odeon Cinema is an important example. The Council will demonstrate that the building's primary use as a cultural venue which has played an important role in London's music and entertainment scene is key to its special interest as a listed building. It thereby follows that removing the cinema auditoria from the principal levels of the building will seriously detract from its architectural hierarchy and historic significance. The Council will maintain the relocation of the cinema function to a new basement below street level, accessed through a new secondary entrance in the return wall, will detract from its cultural significance, harming its special interest as well as the character of the surrounding area. Despite the existing cinema spaces containing little original fabric, the Council will show how the scale of the entrance and the location of the auditoria and the assets' relationships with Bayes' frieze and the location give important appreciation of its history and importance of the building as an entertainment venue, enhancing the visitor experience. The Council will show that locating the auditoria into smaller, cellular, subterranean spaces, in order to free-up the areas of high significance for a hotel layout out-of-keeping with its historic character will remove the spatial, visual and other connections including cultural between the use, function and experience of the building and how the proposals 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.

- 6.12 Changes in use, and the proposal represents a change in the balance of uses from a dominant cultural use to a hotel use, harm the special interest of the building and the wider character. The proposal causes harm to the significance of the cultural asset.
- 6.13 In addition, the Council will demonstrate that the harm caused to the listed building from the insensitively designed extension would be exacerbated by the change of use of the greater part of the building to a hotel in absence of any satisfactory evidence that the future retention of the building could not be achieved through an alternative cultural or leisure use more sympathetic to the building's historic purpose as a performance venue. In line with the statutory tests required by the NPPF, less than substantial harm to any heritage asset must always be justified by balancing the harm against public benefits that may exist and such benefits may include the retention of a building in its optimum viable use. The Council will argue that the balancing exercise has not been properly undertaken, particularly in regard to whether sufficient effort has been given to mitigating the harm through retaining a more sympathetic end use or package of uses and the lack of public benefits to justify the harm.
- 6.14 In terms of the impact on the two adjacent conservation areas, Denmark Street to the north and Seven Dials to the south, the Council will demonstrate that the introduction of a large, glazed roof extension on an already large-scale building, would be out-of-keeping and highly prominent in identified views including in both directions along Shaftesbury Avenue and in key views from the conservation areas. As such, the Council will maintain the proposed extension would be overbearing on its surroundings and would impact negatively on the setting of the two conservation areas, which have a small-scale urban grain characterised by mixed uses, with predominantly low-rise brick buildings grouped around the historic focal points of St Giles' Church and Seven Dials Monument.
- 6.15 The Council recognises that nationally, hotel use and their contribution to the cultural and leisure environment may have changed, as the appellant sets out in paragraph 5.51; however, the Council will demonstrate that this is less applicable in this instance given the West End location of the appeal site on the busy Shaftesbury Avenue. This area of central London has always been a cultural destination during both the day and night time, and the Council maintains that the proposed mix of uses, involving predominantly hotel use, would not better contribute to the building's special interest.
- 6.16 The appellant highlights in paragraph 5.41 of their statement of case that the proposed enhancements to the listed building include works to the arched window to the front elevation and refurbishment of the other decorative features of the main façade, including Bayes' frieze and roundels. It is concluded in paragraph 5.45 that when taken together, the proposed development as a whole would represent enhancement of, rather than harm to the significance of

the designated heritage asset. However, as set out in paragraph 2.58 of the officer report, the repair and restoration of the decorative frieze and window are, although recognised as heritage benefits, not considered to overcome the harm identified. These works of improvement and restoration could be carried out in isolation and are not dependent on the completion of the rest of the proposed development.

- 6.17 In terms of public benefits, the appellant also argues that “the proposals represent the optimum viable use of the listed building in heritage terms, which should be included as a public benefit”. As set out in the Officer’s Report, the Council does not consider the proposed use to represent the optimum viable use, as it has not been sufficiently explored whether there is an alternative, less harmful use which would be more suited to the building’s original purpose.
- 6.18 Paragraph 5.78 of the appellant’s statement of case lists a number of points which it considers are public benefits. A review of the list suggests the majority of these points are elements of the proposals which comply with development plan policies, rather than exceeding policy requirements, and as such, are not considered to constitute significant public benefits. It is recognised that the proposed works to enhance the public realm, improve permeability and provide active frontages would represent benefits, but the Council will demonstrate that these are not significant, and in combination with the heritage benefits highlighted in paragraph 6.16 above, would not overcome the harm identified.
- 6.19 Contrary to the appellant’s position that should the development be found to cause harm, this would be at the lower level of less than substantial (paragraph 5.79 (f) of the statement of case), the Council will maintain that the level of harm arising from the proposed development would be at the high end of less than substantial, and that the proposals do not provide clear and convincing justification for the harm caused to the heritage assets. In addition, the Council will demonstrate that the building would not be retained in its optimum viable use, and the possibility of doing so (i.e. the introduction of a theatre or alternative predominantly entertainment-focused use), has not be adequately explored. This issue is also addressed as reason for refusal 2.
- 6.20 The Council will therefore maintain that the appeal scheme would remain contrary to local and regional policy requirements in terms of its design, impact on the significance of the listed building, and resulting visual impacts. The Council will show that RfR 1 is sound.

Reason 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.

- 6.21 The Council seeks to protect cultural and leisure facilities and where development involves the loss of such a facility, it must be demonstrated to the Council's satisfaction that there is no longer a demand. Where a cultural or leisure facility is re-provided on site as part of a re-development proposal, the impacts of the re-provision on the existing occupier and users and the loss of cultural heritage, must be considered. Any replacement facility must be at the same or better standard than the facility which is lost and accessible to its existing users. During the course of the appeal, the Council will demonstrate that it has not been satisfactorily evidenced that the development would provide the maximum reasonable amount of cultural or leisure use at the site and that the proposed cinema would not be of a comparable standard to the existing facility owing to the significant reduction in cinema offer and experience, cinema area and cinema seats and relocation to basement level.
- 6.22 The Council will demonstrate that its second reason for refusal is not entirely misconceived (see 5.80 – 5.82 of the Appellant's statement of case where this is asserted) and that the Appellant has misunderstood and misapplied the policy context. The current cultural *facility* will be lost, although a different, smaller, cinema use is proposed for a re-modelled basement (so a cinema use is continuing, but it is no longer the dominant (indeed essentially only use) but rather a significantly reduced subsidiary or ancillary use. The Council will show that paragraph 5.83 and 5.84 of the Appellant's Statement of case is wrong as the current facility is indeed being lost. Further the Council will show that the proposal does not comply with Policy D2 Heritage.
- 6.23 The Council will demonstrate that the replacement facility would be of a lesser standard and would not meet the requirements of policy C3 owing to the diminution of the cultural / leisure facility and experience. Where proposals involve the loss of a cultural or leisure facility, which the Council will maintain is the case in this instance, the appellant is expected to search for alternative cultural and leisure uses for the site through a marketing exercise undertaken over a period of not less than 12 months and be based on a realistic price/rent which is supported by the Council. In the absence of a marketing exercise to explore whether there was a viable interest from alternative cultural/leisure operators in combination with the late receipt of expression of interest from theatre operators, the Council will contend that the appeal proposal has not adequately explored whether smaller scale, less harmful proposals would be viable and sufficient to subsidize the necessary repair works. Further the Council will show that the contribution to be made by the significantly reduced basement cinema use and the contribution it makes to the range of cultural and leisure facilities in the borough is not clearly set out. As the Officer's Report explains at paragraph 1.5, once lost cultural and leisure facilities cannot easily be replaced as land and construction costs make it challenging to provide new facilities. This has been demonstrated on other sites in the borough where previous approvals for cinema use have resulted in the cinema use not being

delivered or significantly reduced in size, such as Hawley Wharf in Camden Town and Marine Ices on Chalk Farm Road.

6.24 The Council's evidence demonstrates there is interest in the building from potential theatre operators, and the limited evidence provided by the appellant as part of their statement of case confirms there has been at least one formal offer made demonstrating there is more than just an expression of interest in the site, but potential demand. The Council notes that the appellant has prepared a theatre planning report by Charcoalbue and costing report by G&T (not included with statement of case) and has made "formal approaches...to a number of theatre operators". Neither report, nor the formal approaches made, nor this information as to offers, nor the information as to any informal inquiries, was provided with the application submission and it has therefore not been consulted upon. The Council will consult upon this report in order to inform its views and will present its views following consultation in its evidence. However the Council notes that this report is not a substitute for a marketing exercise and the information presented demonstrates the inadequacy of the marketing exercise and lack of compliance with Camden's policy and SPD. The offer made has not been presented to the Council for assessment, the Council notes as BPS reported "*We have recently been informed that theatre operators have shown considerable interest in the building, and there is the potential for a large prices to be achieved in a sale to such an operator. The asking pricing reportedly being quoted by the owner to these prospective purchasers is £45m, which does conflict with the owner's assertion that the site has very limited value without major redevelopment*".

6.25 The Council will show that RfR 2 is sound.

6.26 In reference to paragraph 5.95 of the appellant's statement of case, the Council does not agree with their assertion that the Council agreed that no marketing would be required as the Case Officer's correspondence has been taken out of context. Rather than agreeing to waive the requirement for marketing, the case officer stated on 28 June 2018 that marketing "...**may** not be required **dependent** on the conclusions of the Heritage Consultant" (emphasis added). For the reasons set out in paragraphs 2.52 and 2.53 of the Officers Report the Council did not consider the Heritage Consultant responded to the brief due to the fact that the review did not directly address the question of the conservation deficit or give direct answers to the Council's questioning of the appellant's identified and suggested costs. As such, it was not considered or agreed that a marketing exercise would not be required.

Reason 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.

- 6.27 Local Plan policy A1 seeks to protect the quality of life of occupiers and neighbours. Policy A4 seeks to ensure that noise and vibration is controlled and managed and remains in accordance with the Council's adopted noise thresholds. Submitted alongside the application was a Noise Impact Assessment, including a noise survey to determine the existing background sound levels in the vicinity of the site and surrounding noise sensitive premises. However, no details were provided of the proposed building services plant. The Council will show that due to a lack of necessary information regarding the amount and location of plant, noise levels or necessary attenuation measures, officers cannot be confident that the proposals would comply with the Council's minimum noise and vibration standards.
- 6.28 Paragraph 5.111 of the appellant's statement of case states that reason for refusal 3 will be dealt with in the statement of common ground; however, it is noted that at the time of drafting, that the statement does not refer to this issue, and as such, the Council continues to regard this as a reason for refusal which has not yet been satisfied. Nevertheless, officers accept that were further information with regard to the above be submitted for review, this reason may be overcome and as such has engaged with the appellant. Should the additional details requested be forthcoming and found appropriate by officers, this reason may be withdrawn.

Section 106 Reasons for Refusal (nos. 4 – 14)

- 6.29 Reasons for refusal nos. 4 – 14 are based on the failure of the Appellant to enter into a legal agreement. As stated within the informative of the decision notice, these matters could be overcome by entering into an appropriate legal agreement. The Council is willing to engage in this process with the Appellant and will endeavour to, so that the matters in dispute relating to the appeal are refined.
- 6.30 The Council will provide evidence as part of the appeal to demonstrate that the requirements are justified against relevant planning policy and meet any relevant tests. This includes the tests laid out in Section 106 and the Community Infrastructure Levy (CIL) Regulations 2010, in particular Regulation 122(2), as well as national guidance and the National Planning Policy Framework (particularly paragraphs 54 - 57).
- 6.31 The Council will demonstrate that the proposed development would be unacceptable unless the appellant agrees to undertake planning obligations to mitigate the impacts of the development. A draft list of heads of terms, seeking to overcome reasons for refusal 4 to 14 is set out below:

- Workplace travel plan and financial contribution for travel plan monitoring
- Coach-free development
- Highways / pedestrian, cyclist and environmental improvements contribution
- Servicing Management Plan for the commercial element
- Construction Management Plan, community working group and monitoring fee
- Approval in Principle Report and appropriate financial contribution towards an approval in principle
- Energy Efficiency and Renewable Energy Plan
- Carbon offset contribution
- Sustainability Plan
- Local employment and training package including financial contribution

Other comments on the appellant's Statement of Case

6.32 The Council will dispute the accuracy of the appellant's chronology of events and the Council's correspondence throughout pre-application and application discussions. It will be demonstrated that the Council's aim is always to proactively work with the appellants towards the approval of sustainable development, evidenced by the Council's Authority Monitoring Report, which will be included with the Council's evidence and any agreed core bundle. The report shows that in 2017/2018 over 90% of major applications are approved. The 2018/2019 Monitoring Report has not been published to date, but the Council's records show that 39 of 41 major applications were approved, an approval rate of 95%. The Council considers that the chronology presented is summarised inaccurately and the chronology in fact demonstrates engagement by the Council, including engaging in conversations about the design of the roof extension and an intention of working towards an agreeable solution. The Council will demonstrate that the proposed development is not a form of sustainable development and was justified in the refusal of the appeal proposals.

Conclusion

6.33 The appeal proposals substantially underachieve against national, regional and local policies (and guidance). Each of the reasons for refusal are considered to be sufficient to justify the refusal of the appeal proposal in their own right, and together result in a scheme that would not represent sustainable development as defined within paragraph 8 of the NPPF.

6.34 The appellant concludes in their statement of case that the proposals would not result in harm to the heritage asset, but that the significance of the building will in fact be enhanced (although this is contradicted by paragraph 5.15 which states that there will be "some harm" to the listed building). Should the Inspector

find that the proposals do result in harm, the appellant argues that such harm would be outweighed by the scheme's public benefits.

- 6.35 The merits of the proposal are recognised and include the repair and restoration of the decorative frieze and arched window to the front elevation; however, the benefits of the scheme would not outweigh the harm caused to the significance of the listed building and setting of the conservation areas as a result of the change of use and extension to the building. As set out above, and in the Officer's report, although the Council does not object to the principle of a roof extension and recognises the heritage benefits proposed, overall, the development would compromise the form and architectural and cultural integrity of the host building. The proposed change of use is considered to cause harm to the significance of the building, and in the absence of an appropriate or sufficient marketing exercise, the possibility of the retention of a greater quantum of an alternative cultural or leisure use which would preserve the building's cultural significance has not been satisfactorily explored.
- 6.36 As set out in paragraph 193 of the NPPF, great weight must be given to an asset's conservation. Any harm to the significance of a designated heritage asset should require clear and convincing justification. In this instance, the level of harm caused to the listed building and nearby conservation areas is considered to be less than substantial; and this must be given great weight in the planning balance. The benefits provided by the scheme would not overcome or outweigh this harm.
- 6.37 Regard has been had to the development plan, as required under Section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004, and other material considerations. Paragraph 11 of the NPPF has a presumption in favour of sustainable development and the benefits of the scheme have been weighed against the economic, social and environmental dimensions as specified in paragraph 8 of the NPPF. The appeal proposal does not accord with the development plan (for the reasons addressed within the Council's case) and there are no other material planning considerations that indicate that planning permission should be granted.
- 6.38 The Inspector will respectfully be invited to dismiss the appeal against the refusal of planning permission 2017/7051/P and listed building consent 2018/0037/L. However, should the Inspector be minded to allow the appeal, the Council will request that suggested conditions are applied. These are being discussed with the intention of reaching agreement with the appellant before the opening of the forthcoming Public Inquiry.