

PLANNING SERVICES

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

**PROOF OF EVIDENCE
Laura Hazelton BSc (Hons), MA**

**FOR PUBLIC INQUIRY COMMENCING ON
1st December 2020**

APPEAL SITE

135-149 Shaftesbury Avenue, London, WC2H 8AH

APPELLANT

Capitalstart Limited

SUBJECT OF APPEAL

Appeal against London Borough of Camden's refusal of Planning Permission and Listed Building Consent 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

PINS REFERENCES: APP/X5210/W/19/3243781 & APP/X5210/Y/19/3243782

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INTRODUCTION

- i. I, Laura Hazelton, have prepared this proof of evidence for presentation at the Public Inquiry into the appeal. I hold a Bachelor of Science with Honours in Psychology as well as a Master's degree in Planning Policy and Practice from London South Bank University. I am eligible for membership of the Royal Town Planning Institute.
- ii. Since March 2015 I have been working in Camden Council's Local Planning Authority and I was promoted to a Senior Planning Officer position in August 2017. Prior to this, I worked as an Enforcement Officer at the London Borough of Redbridge. During my professional career as a planning officer I have dealt with a wide range of planning applications including major, minor and householder development proposals
- iii. I am familiar with the appeal site and have viewed the building internally on two occasions. The evidence that I have provided for this appeal is accurate to the best of my ability and I confirm that any professional opinions expressed are my own.

SUMMARY

- iv. As the Council's planning witness, my proof deals principally with an assessment of the proposals against the Development Plan and the overall planning balance. In my proof, I provide the policy context in relation to each reason for refusal, I provide an assessment of the proposals against the requirements of policy and discuss the matters in dispute in relation to each reason. I provide my response to the Appellant's chronology of events and the arguments made in their statement of case before turning to the overall planning balance.
- v. With regards to the first reason for refusal, my colleague Ms Hatton demonstrates that the proposed detailed design, form and architectural character of the proposed roof extension is unacceptable and would not meet the highest standard of design required by policy D1, nor would it respect the character and proportions of the host listed building or the character, setting, context and form and scale of neighbouring buildings, contrary to policy D2. The introduction of a large glazed element would weaken the architectural language of the area and would be distinctly out of character. The proposed materiality would not support the existing character and would be detrimental to the architectural quality of the area. Likewise, the change of use would cause harm to the significance of the building as a result of the building no longer being in a predominantly cultural use. It would also cause harm to the significance of the frieze by severing the relationship between the frieze and the use of the building. The proposed cinema would not make a contribution to the significance of the building or the cultural and leisure environment

compared to the current facility or a new theatre.

- vi. I concur with Ms Hatton's analysis that the appeal proposals would cause harm to the significance of the designated heritage asset and that in line with paragraph 196 of the NPPF, this harm would be less than substantial. The level of harm would be towards the higher end of less than substantial. The public benefits that are relied upon by the Appellant do not clearly or convincingly outweigh the harm. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF (para. 196) requires that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the optimum viable use of that asset. The proposed public benefits are not considered to outweigh the harm caused, and the proposed scheme is not considered to represent the optimum viable use of the site. I consider that theatre use could quite likely be the optimum viable use, and that the Appellant has not satisfactorily demonstrated that it would not be. I concur with the analysis of my colleague Ms Hatton and agree that the appeal proposal conflicts with Local Plan policies D1 and D2.

- vii. With regards to the second reason for refusal, I demonstrate that the proposals would be in conflict with policy C3 as they would result in a significant reduction in the quantum of cultural floorspace and its relocation away from the building's principal floors into the basement. These works would also be contrary to policy D2 due to the harm this would cause to the significance of the listed building. Further, insufficient evidence has been put forward to demonstrate that the building would not be suitable for continued cultural use. Although a cinema would be re-provided, this would be drastically reduced in size, quality, and experience. The proposed cinema is not a comparable replacement; it would become a significantly reduced subsidiary use, and offer a diminished cultural facility and experience. The existing cultural facility would therefore be lost, contrary to policy C3. There has been no proper and meaningful marketing process as required by policy C3, and I therefore do not consider that it can be reasonably concluded that the appeal scheme is the optimum viable use or that the site could not support an alternative cultural use.

- viii. In policy terms, theatre use or other cultural use on the principal floors would be the optimum viable use for this building given the contribution its cultural use makes towards its significance and the policy protection of cultural and leisure facilities. Considering the evidence provided by the Council's witnesses and the statutory consultee, the Theatres Trust, the Appellant has demonstrably failed to demonstrate to the Council's satisfaction that there is no longer a demand for the existing facility, or for alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough without causing the same level of harm to the significance of the building. The Appellant's own evidence suggests that

the appeal proposals would result in a significant financial deficit, which would be greater than retaining the existing cinema facility. As such, I maintain that the proposals are contrary to both policies C3 and D2 of the Camden Local Plan.

- ix. In the overall planning balance, I recognise the merits of the appeal proposal, and the most significant of these are, in my view, enhancements to the public realm, improvements to the permeability and activation of the ground floor frontages, the contribution to the local economy from the new commercial uses, and the heritage improvements. Overall, I do not consider these benefits carry significant weight and I assign only low weight to all of these benefits. Although the proposals could bring some benefit in terms of employment and visitor spend, there are no additional community benefits or innovation which would represent a benefit of significant weight. The benefit is compliance with policy, but does not go further than this. The employment benefits offered would also be at the cost of the existing cultural facility, causing heritage harm. The public realm 'improvements' are very limited indeed and consist of minor widening of two pavements, as such this would carry limited weight as would the improvements to the permeability and activation of the ground floor frontages, which again also bring with them harm, particularly to the Frieze and the significance of the frontage through the change of use.
- x. The heritage improvements, predominantly the repair and consolidation of the Bayes frieze and roundels; reinstatement of the original recessed poster boxes to Shaftesbury Avenue façade; reopening of the arched window over the main entrance; structural works to arrest and redress structural failings, are recognised; however, such benefits could be delivered through other development proposals on this site. I therefore assign only moderate weight to this benefit.
- xi. Paragraph 10 of the NPPF concerns the 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 and there are no other material planning considerations (i.e. planning benefits) that indicate that planning permission or listed building consent should be granted, and as such, the Council is of the view that the appeals should be dismissed.

STRUCTURE OF EVIDENCE

xii. In my evidence, I provide a summary of the application which is the subject of the appeal and the process undertaken leading to the refusal. I identify and summarise the policy framework under which the Council's decisions were made. I deal with the Council's main reasons for refusal before addressing the Appellant's grounds of appeal and then turning to the overall planning balance.

xiii. My evidence will be divided into twelve sections:

Section 1: (Site and Surroundings) I will describe the appeal site and surrounding area.

Section 2: (Planning History) I shall provide a summary of the planning history relating to the site.

Section 3: (Planning Policy) I shall identify national, regional and local planning policies and guidance relevant to the reasons for refusal and the issues discussed in my proof.

Section 4: (The Proposal) I shall provide a summary of the planning and listed building consent application and the reasons for refusal.

Section 5: Structure of assessment.

Section 6: (Assessment of the Proposals) I will assess how the appeal proposal results in demonstrable harm.

Section 7: (Comments on Appellant's Statement of Case) I will respond further to arguments made by the Appellant in their submitted documents to date.

Section 8: (Section 106 Planning Obligations)

Section 9: (Planning Balance) I will balance the benefits provided by the scheme against the demonstrated harm.

Section 10: (Conclusions and Summary) I will summarise the arguments made in this proof of evidence.

Section 11: (List of agreed/suggested conditions)

Section 12: (List of appendices)

xiv. In addition to myself, the Council intends to call three witnesses:

- Mr Andrew Jones, Director of BPS Chartered Surveyors, who will provide further evidence regarding viability matters. Mr Jones's evidence includes a building costs review from Mr Prowling. If the inspector wishes, Mr Prowling can also attend the inquiry.
- Dr David Wilmore, Principal Consultant of Theatresearch, who will be providing further evidence regarding theatre architecture and design and theatre viability.
- Ms Colette Hatton, Planning Officer (Conservation) with Camden Council, who will provide further evidence regarding the detailed design of the appeal proposal; its height, scale and massing, impact on the significance of the host listed building, on the character and appearance of the adjacent Denmark Street and Seven Dials Conservation Areas and on the local streetscape.

1. SITE AND SURROUNDINGS

- 1.1. Please refer to the Site and Surroundings section of the Statement of Common Ground (SoCG) for a full description of the appeal site and the surrounding area.
- 1.2. The site's and immediate surroundings' various designations are summarised below. Although the site is not located within a conservation area, it is located adjacent to the borders of two conservation areas. A discussion of their character and significance is also provided.

135 – 149 Shaftesbury Avenue Grade II Listed

- 1.3. The application site was statutorily listed as Grade II on 1 July 1998 (list entry number 1271631). The full listing description is provided as core document I1. Ms Hatton discusses the site and its significance in section 2 of her evidence.

Denmark Street Conservation Area

- 1.4. The application site is not located within the conservation area but is located in close proximity to its southern boundary which covers the north side of New Compton Street opposite the north elevation of the site. The part of the conservation area immediately north of the application site was within the original conservation area designation covering the area between New Compton Street, Phoenix Street, Charing Cross Road, Denmark Place and St Giles High Street, designated on 1 March 1984. An extension was designated in June 1991 to include the south side of Andrew Borde Street and again in July 1998 to include the land between New Oxford Street and Earnshaw Street.
- 1.5. The Denmark Street Conservation Area lies within the ancient parish of St Giles, which has been developed since at least 1117. The conservation area appraisal and management plan (2010) describes how the historic heart of the conservation area is St Giles Church (Henry Flitcroft, 1734) and churchyard. The historic street pattern and network of narrow passageways which remains in much of the southern part of the area (the area closest to the application site) lends an intimate character. The surrounding architecture is a varied mix of former residential, industrial and commercial, dating from the late C17 to the early C20, but which has a consistency of materials and scale. The northern portion of the CA has a very different character, which is dominated by Centre Point, traffic, and the associated 1960s road layout.
- 1.6. Since the latter part of the C20th, Denmark Street has been renowned as a centre of popular music instrument retailing, and it also houses associated music industry uses such as instrument repair workshops, studios etc. This concentration of uses creates a unique and vibrant atmosphere, which is particularly distinctive, and contributes significantly to the area's special interest and character.

Seven Dials Conservation Area

- 1.7. The Seven Dials Conservation Area was initially designated in November 1971, with further extensions designated in 1974, 1991 and 1998. The conservation area can be broadly divided into three sub areas; one centred on Seven Dials, the second incorporating the Freemasons Hall/Great Queen Street and the third an area in the north east of the Conservation Area around Macklin Street. The application site is located in close proximity to sub area one (Seven Dials), which was designated in 1974 and includes the south side of Shaftesbury Avenue opposite the south elevation of the site.
- 1.8. The conservation area appraisal and management plan (1998) describes the special character of the conservation area as being found in the range and mix of building types and uses and the street layout. The character is not dominated by one particular period or style of building but rather it is their combination that is of special interest. Within the area's tightly contained streetscape, changes of road width, building form and land use give dramatic character variation, narrow alleys and hidden yards provide unforeseen interest and the few open spaces provide relief and a chance to pause and take stock of one's surroundings.
- 1.9. Shaftesbury Avenue is described as an important Central London Avenue, with a distinctive scale of buildings and use of materials, dominated by red brick and the use of terracotta. The street and the plot widths are generally wider than the rest of the Conservation Area and the buildings are generally higher. Shaftesbury Avenue's character makes it a natural boundary to the Conservation Area, with three distinct spaces along its length. Cambridge Circus is the grandest in terms of layout and scale. The Monmouth Street/Neal Street junction, with its widened footways forms a lesser and informal space. Outside the Conservation Area at the northern end is Princes Circus, currently a fragmented and traffic dominated space that contributes little to the area. The application site is located in between Cambridge Circus and the Monmouth Street/Neal Street junction.

Archaeological Priority Area

- 1.10. The site is located within the Lundenwic Archaeological Priority Area (APA). This APA includes the Anglo-Saxon international trading emporium of Lundenwic which grew along the Thames and Fleet rivers. Dated between the 7th and 9th century the settlement was over 60 hectares in size. Archaeological excavations since 1984 have revealed important evidence of the town.

Public Open Space and Site of Local Importance for Nature Conservation (SINC)

- 1.11. Phoenix Garden, to the north of the site on the opposite side of New Compton

Street is designated as Public Open Space and a Site of Local Importance for Nature Conservation and is identified as such on Camden's Local Plan policies map (formerly included within the Development Framework Proposals Map 2010 and originally designated upon the adoption of the Unitary Development Plan 2006). During the preparation of the Local Plan, the Council commissioned the London Wildlife Trust (LWT) to undertake a review of the Sites of Importance for Nature Conservation (SINC) in the Borough. The description is provided in full below.

"This garden is located in the heart of London just off Shaftesbury Avenue, established in 1984 on the site of demolished housing. There is an open meadow area and rockery, pond and children's play area. There are dense shrubberies with young trees planted within. These include rowan (Sorbus aucuparia), willow (Salix sp.), birch (Betula sp.), maidenhair tree (Ginkgo biloba) and walnut (Juglans regia). Many native wild flowers have been planted, including bluebell (Hyacinthoides non-scripta), red campion (Silene dioica), hedge woundwort (Stachys sylvatica), black horehound (Ballota nigra), ox-eye daisy (Leucanthemum vulgare), cow parsley (Anthriscus sylvestris) and wood avens (Geum urbanum). The pond has a diverse vegetation around its edges, including water mint (Mentha aquatica), great reedmace (Typha latifolia), yellow iris (Iris pseudacorus) and soft and hard rushes (Juncus effusus and J. inflexus). The site is a favourite place for local workers and residents with small birds, particularly tits and finches. It is truly a green oasis within a densely built up area. The garden is open in daylight hours to the public at all times." (SINCB2 ref.CaL04).

Local List

- 1.12. Phoenix Garden is also designated as a locally listed space (ref.287). The listing description for this non-designated assets is provided in full below:

'The Phoenix Garden, St Giles Passage off New Compton Street site ref.287

Significance: Architectural, Townscape and Social Significance

Asset Type: Natural Features or Landscape

Description: 'Although a new community garden created in 1984, The Phoenix Garden is on part of the former site of an orchard belonging to St Giles Leper Hospital established in the C12th by Queen Maud. It was later church land belonging to St Giles-in-the-Fields nearby. The site was built over for housing by the early C20th but following bomb damage in WWII it became a car park. It was created as a community garden under the auspices of Covent Garden Open Spaces Association and was laid out in summer 1984. It is run as an ecological garden, with a mix of ornamental and native species to encourage a range of wildlife and the garden contains a piece of public art by 'Stik'.

2. PLANNING HISTORY

2.1. Please refer to the Planning History section of the SoCG for the relevant planning history of the site.

3. PLANNING POLICY

3.1 Please refer to sections 4 – 6 of the SoCG for the relevant policies and guidance that are applicable to the appeal.

3.2 Copies of all the Camden Local Plan policies that formed part of the original reasons for refusal were sent as part of the Questionnaire. In determining the planning application, the Council had regard to relevant legislation, national planning policy and practice guidance, development plan policies, supplementary planning guidance and the particular circumstances of the case. In making any decisions as part of the planning process, account must be taken of all relevant statutory duties including section 38(6) of the Planning and Compulsory Purchase Act 2004 and sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3.3 The current 2016 Plan is still the adopted Development Plan, but a draft New London Plan was published by the Mayor for consultation in December 2017, with the consultation period ending on Friday 2 March 2018. The draft Plan was subsequently considered by a formal Examination in Public which ran between Tuesday 15 January 2019 and Wednesday 22 May 2019. Formal adoption was expected in late 2019 / early 2020 and has been delayed by the Ministerial comments and the coronavirus pandemic; however the draft plan is at a late stage in its process of adoption and is a material consideration in planning decisions. The significance given is attributed more weight as it moves through the process to adoption.

4. THE PROPOSAL

4.1. Please refer to the SoCG for a brief summary of the proposal. Please also see core documents F1 and 2 for copies of the pre-application advice reports issued by the Council prior to the submission of the application.

5. STRUCTURE OF COUNCIL'S ASSESSMENT

5.1. The original decision notice included 14 reasons for refusal. My evidence deals primarily with reasons for refusal 1 (Impact to significance of host listed building and nearby Seven Dials and Denmark Street Conservation Areas, and 2 (Failure to provide maximum reasonable amount of replacement cultural or leisure facilities).

5.2. Reasons for refusal 1 of the planning and listed building consent applications

(Impact to significance of host listed building and nearby Seven Dials and Denmark Street Conservation Areas) will be principally covered in the proof of Ms Hatton, Camden Planning (Conservation) Officer. There is also material evidence in the proof of Dr Wilmore, Principal Contractor for Theatresearch.

- 5.3. Reason for refusal 2 of the planning application (Failure to provide maximum reasonable amount of replacement cultural or leisure facilities) will be principally covered by both Dr Wilmore, (covering theatre architecture and design and theatre viability) and Mr Jones, Associate Director of BPS Chartered Surveyors (covering viability matters) in their respective proofs. This reason is also discussed in the proof of Ms Hatton.
- 5.4. Reason for refusal 3 (Noise and disturbance) has been agreed through the provision of addition details and drawings to the Council, and the appellant agrees to conditions requiring the proposed plant to operate in accordance with Camden's noise standards (conditions 13 – 15 in the draft conditions in section 11).
- 5.5. Reasons for refusal 4 (Workplace travel plan and financial contribution for travel plan monitoring), 5 (Coach-free development), 6 (Financial contribution towards public highway works), 7 (Financial contribution towards Pedestrian, cyclist, and environmental improvements), 8 (Servicing management plan), 9 (Construction Management Plan, Community Working Group and financial contribution toward implementation support), 10 (Approval in Principle Report and financial contribution), 11 (Energy efficiency plan and renewable energy plan), 12 (Carbon offset contribution), 13 (Sustainability plan) and 14 (Local employment and training package including financial contribution) are to be overcome by the completion of a S106 legal agreement and relevantly worded conditions. At the time of writing, both parties had agreed to the principle of each of these terms, though the final wording of the agreement was still to be agreed.

6. ASSESSMENT OF THE PROPOSALS

Impact on the significance of host listed building and nearby Seven Dials and Denmark Street Conservation Areas (Reasons for Refusal 1)

6.1. Reason for refusal 1 states the following:

“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.”

6.2. This reason for refusal alleges that the appeal proposal would, by virtue of the height, mass, design and materiality of the proposed rooftop extension, in combination with the change of use of the principal floors of the building to hotel use, result in harm to the significance of the host listed building and nearby conservation areas. The Council considers this harm to be at the higher end of less than substantial.

Policy context

6.3. Policy D1 Design recognises the importance of good design to create places, buildings and spaces that work well for everyone, look good, last well and will adapt to the needs of future generations. More specifically, and relevant to the current proposals, it requires that development: respects local context and character; preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage; is sustainable in design and construction; comprises details and materials that are of high quality and complement the local character; integrates well with the surrounding streets and open spaces; and preserves strategic and local views.

6.4. The supporting text to the policy requires all developments, including alterations and extensions, to be of the highest standard of design and to consider various aspects, including the following which are relevant to the appeal proposals: the character, setting, context and form and scale of neighbouring buildings; the character and proportions of the existing building; the prevailing pattern, density and scale of surrounding development; the impact on existing rhythms, symmetries and uniformities in the townscape; the composition of elevations; the suitability of the proposed design to its intended use; and the wider historic environment and buildings, spaces and features of local historic value (paragraph 7.2). The Council will welcome high quality contemporary design provided it responds to its context (paragraph 7.3).

- 6.5. Policy D2 states that the Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas and listed buildings. The Council will not permit development that results in less than substantial harm to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm. It also states that the Council will resist development outside of a conservation area that causes harm to the character and appearance of that conservation area.

Design Assessment

- 6.6. My colleague Ms Hatton, Camden Conservation Planning Officer, has addressed this reason for refusal in her proof of evidence and has provided detailed evidence regarding the significance of the host listed building and Conservation Areas, as well as an assessment of the proposed design and architectural character and the resulting impacts of the development on the significance of the designated heritage assets. Appended to her evidence is a statement by the Council's Senior Urban Design Planner Alastair Crockett which I also refer to. I agree with her conclusions that the development would cause less than substantial harm, and that this would be at the higher end of less than substantial.
- 6.7. In terms of the detailed design, form and architectural character, the proposed roof extension is considered unacceptable and would not meet the highest standard of design required by policy D1 in a number of regards. The proposal would not respect the character, setting, context and form and scale of neighbouring buildings. As Ms Hatton notes in her evidence, the majority of the Shaftesbury Avenue buildings are four to five storeys, built from red brick with stone dressings and detailing, providing them with a sense of solidity and grandeur. The proposed design and materials would be out of character in this location. The only reference point for the proposed use of glazing appears to be the post war development to the northern end of Shaftesbury Avenue, which as Ms Hatton notes in her evidence "is considered to be fairly unsuccessful as the buildings are uncharacteristically large, at seven and eight storeys, and the substantial amounts of glazing and use of unsympathetic materials erodes the established architectural language of the street" (para 2.71). I agree with this assessment, as well as Mr Crockett's that "the massing is clumsily handled through a series of generic glazed stacked boxes that contain no apparent reference to the existing building or setting" (para.2).
- 6.8. Although policy D1 acknowledges that the Council will welcome high quality contemporary design, this is dependent on it successfully responding to its context. In this instance, although a high quality, well detailed, contemporary extension could be acceptable in this location, the proposed development would not meet this requirement. As the Design Review Panel (DRP) noted, there were a number of unresolved concerns regarding the use of glazing in terms of the standard of finish and the suitability of this material given the hotel function

within. By way of background, Camden's DRP was formed in 2018 to provide additional expert advice to secure high quality development. The panel is made up of 26 independent and impartial leading professions in the fields of landscape architecture, urban design, environmental sustainability, inclusive design, and development economics and delivery. The Panel is provided by Frame Projects and is funded independently of the Council.

6.9. This point is also discussed by Ms Hatton at paragraphs 4.9 and 4.10 of her evidence, where she notes "The quality of the glass construction is in question, particularly in terms of the detailing and how the floor plates and partitions meet the glazed elevations. Visible floor plates and partitions would create clutter behind the glazing, compromising the clean simple lines that are envisaged and shown on the submitted drawings.....The use of the extension as a hotel would also impact the appearance of the glazed extension as there would be extensive associated paraphernalia in order for the hotel to function. Curtains and blinds would be required for privacy and blocking out light". In this regard, the proposals would also be contrary to policy D1 where it requires development to demonstrate the suitability of the proposed design to its intended use (para. 7.2). Mr Crockett also picks up on this issue, that hotel bedrooms demand privacy, good acoustics, the ability to have complete darkness and comfortable temperature. He considers that it is doubtful the proposed design and material will provide these qualities and will result in a cluttered aesthetic (para. 6).

6.10. The Appellant claims that "the architectural language was endorsed by Camden's Design Review Panel Chair's Review by referencing a similar building as a comparator". The Panel suggested New Court, the Rothschild Bank headquarters in the City of London as a comparator that shows how well glass boxes can be designed. In my opinion, their reference to New Court was to highlight a well detailed building which demonstrates the level of finesse and detailing required to ensure a fully glazed design is successful. I do not consider these characteristics have been demonstrated by the current proposals. I note that Mr Crockett also comments on the DRP comments, and considers the example to be intended as a precedent of a well-designed glazed element, rather than one of usage. Ms Hatton also discusses this point in her evidence and acknowledges that although there are examples of modern glazing being successfully integrated on existing buildings, for example at the Tate Modern; this does not necessarily indicate the appropriateness of the material for the appeal proposals. In that case, the extension is largely opaque which shields the activities within (para. 4.6). In this instance, the proposed glass extension would house a hotel behind, and although the proposals provide fritted glazing to provide an element of privacy, there has been no consideration of how the clutter associated with hotel use would impact the final appearance of the extension. It is also important to note that the DRP report dated 2 February 2018 clearly stated that they still were "not able to support the proposals".

6.11. I agree with Ms Hatton's assessment and Mr Crockett's design commentary

that the proposed development, as a result of its height, bulk, design and materials would not respect the character and proportions of the existing building. In paragraph 4.3 of her evidence, Ms Hatton discusses the importance of the existing building's rectangular form and how the proposals impact this. "The height and the bulk detract from the host building and weaken its strong architectural rectangular form. The form is noted as being an important component of the building's significance and is recognised as contributing to the surrounding architectural context. Compromising this fundamental design component would cause some harm to the building's significance".

- 6.12. As such, the proposals would not meet the high standards of design required by policy D1 and would not preserve the appearance and significance of the host building, contrary to policy D2, and is unacceptable in this regard. The impact on the designated heritage assets is considered in more detail below.

Cultural and Heritage Assessment

- 6.13. The requirements of policies D1 and D2 are set out briefly in paragraph 6.5 above. In a more general sense, the proposed development would not take account of its surroundings and preserve what is distinctive and valued about the local area as required by policy D1. The policy explains that how places have evolved historically and the functions they support are key to understanding character. It is important to understand how places are perceived, experienced and valued by all sections of the community. People may value places for different reasons, and memory and association are also a component of how people understand a place. All of these values and experiences are part of understanding the character of a place (Policy D1, para. 7.4). Dr Wilmore comments in his evidence on the design of the theatre and its impact on the streetscape, and how the "audience experience has always been a major consideration in the architectural statement of nineteenth and early twentieth century theatres. The sense of theatricality and anticipation was intended to commence when the building came into sight" with the frieze "announcing to the streetscape the link between the decorative arts, architecture and performance" (para. 5.1).
- 6.14. Also of relevance to this reason for refusal is Camden's 'Community uses, leisure facilities and pubs' CPG which talks about how "many long-standing cultural facilities were designed specifically for art and performance and in heritage terms, their public use for entertainment contributes substantially to their significance. The most prestigious venues are located in prominent locations within centres and often feature highly attractive external architecture detailing and opulent interior furnishings" (para. 3.3). The proposals would harm both the architectural character and historic interest of the building. Interlinked with this is the impact arising from the change of the main use of the building to a hotel.

- 6.15. Ms Hatton also discusses how the building is experienced as an entertainment venue and how “the large rectangular form and decorative frieze create a dramatic vision. The grandeur of the entrance generates excitement and the blind elevations create the feeling of another world taking place inside the building” (para. 2.60). When discussing the significance of the cultural use of the building, Ms Hatton highlights how “the symbolism of theatres and cinemas can have a profound effect on the perception and feeling of place” (para. 2.59) and how “the current use of the site has an impact on the public experience of the building. This is significantly due to the atmosphere that is created by the use and the cultural legacy associated with it...the current cinema use as a dominant use retains the strong cultural legacy, the public experience of the building as a place of mass entertainment, and the “setting” of the frieze remains readily readable” (para. 3.11).
- 6.16. On the issue of the frieze, she discusses just how important this is to the significance of the building, and the significance of the relationship between what the frieze is depicting and the use of the building on which it sits – the frieze acts effectively as an advertisement to the building’s use. She goes on to explain that “The dominant cinema use establishes and maintains the building as a performance and entertainment venue, maintaining the historic character and supporting the significance of Gilbert Bayes’s frieze...the existing cinema use makes a positive contribution to the significance of the building and the character of the wider area (para. 6.5).
- 6.17. The proposed change of use would cause harm to the significance of the building as a result of the building no longer being in a predominantly cultural use. I agree with Ms Hatton’s conclusions as to why this is the case, notably, that the change of use would “effectively end the vibrant cultural legacy associated with the building” (para. 3.14). It would also cause harm to the significance of the frieze by severing the relationship between the frieze and the use of the building. As she discusses, “The current use provides the context and “setting” for the frieze and without this the symbolism of the artwork and its intent to reflect use through public art would be diminished. The frieze would be valued simply for its aesthetic qualities and not for its wider cultural meaning and its artistic value as a piece of public art, which is enhanced by the cultural and entertainment activities currently taking place inside the building” (para. 3.8).
- 6.18. The proposed cinema would not make a contribution to the significance of the building or the cultural and leisure environment compared to the current facility or a new theatre. In his evidence, Dr Wilmore discusses the theatricality of the streetscape as the audience disperses and notes that the cascade of patrons leaving the theatre would articulate the streetscape in a way that audiences of small screen cinemas simply cannot begin to compete with (para. 6.2). As discussed in more detail under reason for refusal 2, the replacement cinema would be drastically reduced in size, quality, and experience. The cinema cannot be considered a comparable replacement; it would become a significantly

reduced subsidiary use, of a lesser standard, relocated to basement level and offering a diminished cultural facility and experience.

6.19. In design terms, the proposed extension would impact the character of Shaftesbury Avenue and views from Mercer Street which lies within the Seven Dials Conservation Area, and views from New Compton Street, the locally listed Phoenix Gardens and the Denmark Street Conservation Area. I agree with Ms Hatton's assessment that the introduction of a large glazed element would weaken the architectural language of the area and would be distinctly out of character (para. 4.12). The proposed materiality would not support the existing character and would be detrimental to the architectural quality of the area.

6.20. I have read the design assessment of Mr Crockett and agree with his considerations that the proposals show no apparent consideration for the original building, that the massing is clumsily handled, the proposals are inelegantly detailed and do not constitute a respectful design to the host building.

6.21. I also agree with the conclusions of Ms Hatton that the proposed development would harm the character, appearance and significance of the host listed building, as well as the character of the streetscene and the setting of the adjacent conservation areas.

6.22. The NPPG sets out in paragraph 018 that where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm. Within each category of harm, the extent of the harm should be clearly articulated. In paragraph 5.44 the Appellant provides their own assessment of the effect of the proposed development on the building's significance, and categorises the impacts in terms of whether they consider them to be 'neutral', 'beneficial' or 'harmful'. The CGCA discusses the Appellant's harm assessment on page 2 of their Statement of Case. I agree with the CGCA that the overall judgement relies on the weight ascribed to each element's importance and that certain works should be ascribed greater weight (either harmful or beneficial), resulting in an overall outcome of harm.

6.23. In section 5 of her proof, Ms Hatton considers the same elements as the Appellant, and the level of harm these would cause to the heritage asset. I agree with her conclusions that the development would result in less than substantial harm to the designated heritage asset, and that this harm is considered to be at the higher end of less than substantial. I also agree that the building's use and contribution to the music and entertainment scene contributes to the building's special interest, and the loss of cultural / leisure floor space and its removal from the building's principal floors (which has not been assessed by the appellant in their harm assessment) would cause harm to the building's special interest and significance.

6.24. In terms of the schemes heritage benefits, I agree with Ms Hatton that repairs to the frieze and roundels and the reinstatement of the arched window are

considered significant heritage benefits, but these works would not necessarily depend on the proposed development to come forward. I comment below on Mr Jones's evidence in paragraphs 2.12 and 2.14 of his proof about the Appellant having permitted Odeon to give up its repairing covenant which I take into account at a later point in my assessment. At this point, I recognise that reinstating these features is a significant heritage benefit. The reinstatement of the original poster boxes would be a benefit, but is not considered significant. The exposure of the internal front wall and its decoration with full scale section of the original auditorium is considered a positive feature of the appeal proposals in reference to the historic theatre use, but it is not considered to be a significant heritage benefit. The structural works to address existing failings is also recognised as a benefit. Overall, it is recognised that these works would constitute heritage benefits, but these benefits could also be achieved via an alternative and less harmful design.

6.25. After considering the level of harm caused and the heritage benefits offered, Ms Hatton concludes that the appeal proposals would cause harm to the significance of the designated heritage asset and that in line with paragraph 196 of the NPPF, this harm would be less than substantial. The level of harm would be towards the higher end of less than substantial. Any harm to or loss of a designated heritage asset requires clear and convincing justification (NPPF para. 194) and where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use (NPPF para. 196).

6.26. As set out in the National Planning Practice Guidance (NPPG) public benefits could be anything that delivers economic, social or environmental objectives as described in the NPPF. They should flow from the proposed development and should be of a nature or scale to be of benefit to the public at large. Examples of heritage benefits may include: sustaining or enhancing the significance of a heritage asset and the contribution of its setting; reducing or removing risks to a heritage asset; or securing the optimum viable use of a heritage asset in support of its long term conservation (NPPG para. 020).

6.27. The Appellant sets out in paragraph 5.78 of their Statement of Case a list of the scheme's benefits should the inspector rule that the proposals do not represent the optimum viable use and result in harm to the heritage asset. I consider each of these in turn below. The optimum viable use is also discussed in more detail as part of reason for refusal 2.

- a. *Introduction of a new, viable mixture of uses into the building.* It is recognised that the provision of an appropriate mix of uses, both within areas and in individual buildings can make efficient use of land and promote successful places, as recognised by policy G1, which seeks to encourage the provision of a mix of uses in suitable locations. The introduction of a mixture of uses

into the building is compliant with policy G1, and there is a benefit to a proposal, and to the wider public realm, in being compliant with the development plan, however, as a “public benefit” I consider it is fundamentally a matter of compliance, rather than *more than* compliance. Further, as is discussed in reason for refusal 2, this proposed mix of uses is not considered to have been demonstrated to be the optimum viable use for this heritage asset. I would also note that the existing use of the building with a cinema as the primary use is also compliant with policy G1 and is also preferred. For all these reasons, whilst I recognise there is compliance with policy G1, I consider this is, overall, not to be considered a benefit of this proposal and rather is either neutral or weighs against the proposal.

- b. *The reintroduction of lively, entertainment-focused activity to the Site and its immediate setting.* This point discusses the ‘reintroduction’ of entertainment activity to the site, but the site is already almost wholly in entertainment use. The proposals would in fact result in significantly less entertainment use at the site. As discussed in more details under reason for refusal 2, the loss of the existing facility and significant reduction in cultural floorspace would cause harm to the significance of the heritage asset, and result in the loss of an existing West End cultural facility. I do not consider this is properly to be considered a benefit and rather weighs against the proposal.
- c. *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.* As discussed under point (a) previously, similar points apply, and in my judgement, the delivery of the small D2 use in this case is not a public benefit. It is (at best) arguably compliance with the policy; however, the development does not go beyond such limited compliance (if it is even to be characterised as compliance – in my view, there is a failure to comply with policy C3 as discussed in the reasons for refusal). I do not consider the small cinema proposed delivers significant benefits for the building or the area and it will be read as part of the hotel facilities; see below. I do not consider this is properly to be considered a benefit of this proposal, and rather it is (as purported compliance) either neutral, or, taking into account the policy C3 as a whole, weighs against the proposal. I discuss this further at (h).
- d. *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.* This seems to be repeating point (a).
- e. *Enhanced public realm, including increased pavement widths to the front of the site.* Whilst enhanced public realm could be considered to constitute a public benefit, it is unclear what enhancements the Appellant is referring to

besides alterations to the surrounding pavements. The submitted drawings show a marginal increase in the width of the pavement on Shaftesbury Avenue by approximately 8cm, and an increase of the width of the Stacey Street pavement by approximately 20cm. The value of this as a public benefit is questioned and is at best low – it is plainly not significant.

- f. *Improved access and servicing arrangements.* Given the increase in floorspace, the introduction of new uses and intensification of use, the development would result in significantly more servicing and delivery trips to the site than at present. As noted in the officer report, Camden’s Transport and Highways Planners would not support the proposal to service the site via Shaftesbury Avenue, meaning that servicing would likely continue as existing from the surrounding side streets, but significantly intensified. Again, it is not clear how this would constitute a public benefit; in my view, it weighs against the proposal. See also below.
- g. *Introduction of active frontages and improved permeability into the site;* I agree that improvements to permeability and the activation of the ground floor frontages would constitute a public benefit. I discuss reason for refusal 2 below; however, in this respect I consider that the optimum viable use of a Theatre use would more significantly deliver this benefit and both theatre use and the existing cinema use activate the frontage and add significance to the Frieze, as I discuss elsewhere in my evidence. Whilst I consider that improvements to permeability and activation would constitute a public benefit, the change in use will also cause harm to the significance of that frontage. For this reason I consider this benefit weighs against the proposal.
- h. *Provision of a replacement cinema, designed as fit for purpose for the needs of modern cinema audiences.* This point seems to partly reflect (c) above, nevertheless, I do not consider the replacement cinema offer to constitute a public benefit. If it is a public benefit, it would be a very minor one. It would be significantly reduced in size, number of seats and quality of experience as discussed as part of reason for refusal 2 below. I do not believe the replacement cinema, with its much lower level of footfall, would animate the public realm, or deliver the same or a similar level of excitement as attending a large cinema. I agree with Ms Hatton’s evidence that it would likely be perceived as being for the use of the hotel and its paying guests. Having regard to the use of such facilities in other hotels, it may have a corporate use in being available to hire for corporate conferences and launch events, and there is an economic benefit in providing such event spaces within hotels which can be rented by companies; however, I do not consider such a benefit is akin to serving the cultural and entertainment use which is likely intended by a “replacement cinema” and the policy framework in that regard (other policies seek economic benefits). Finally I am not convinced of its long-term viability as I discuss below in paragraph 7.40. For all these reasons it is my view it is not a public benefit.

- i. *Provision of additional hotel accommodation which will contribute to the local economy through both visitor spend and employment generation.* I agree that the proposed hotel use could bring some benefit in terms of employment and visitor spend (both tourism and it may also contribute through corporate use of its facilities); however, the resulting impact is the relocation of the cultural facility to the basement and a reduction in size and quality which itself would cause harm, as outlined above and in reason for refusal 2.
- j. *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.* Again this seems to be repeating points (a) and (d). In my opinion, providing a mixed use scheme would be complying with policy requirements rather than providing public benefits. It is not clear, and the Appellant does not expand on this, how the proposed mix of uses, a hotel, bar and restaurant and small cinema would contribute to the atmosphere of Tin Pan Alley which is renowned for instrument retailing and music industry uses which create a unique and vibrant atmosphere.

6.28. For the most part, it seems that most of the Appellant's suggested public benefits relate mainly to the provision of a mixture of uses which seems predominantly to be a general policy aspiration, without recognising the extent to which that, in this instance, is in direct conflict with the requirements of policies C3 and D2 which seek to protect historically significant cultural facilities. There is no objection in principle to the mixed use proposed for this site, but the development plan seeks growth in a way which preserves and enhances the borough's unique character and appearance.

6.29. Although the proposals could bring some benefit in terms of employment and visitor spend, there are no additional community benefits which would represent a benefit of significant weight. The employment benefits offered would also be at the cost of the existing cultural facility. The public realm 'improvements' are very limited indeed and consist of minor widening of two pavements, and the improvements to the permeability and activation of the ground floor frontages are recognised as a public benefit, but a minor one.

6.30. The heritage improvements, predominantly the repair and consolidation of the Bayes frieze and roundels; reinstatement of the original recessed poster boxes to Shaftesbury Avenue façade; reopening of the arched window over the main entrance; structural works to arrest and redress structural failings are recognised; however, such benefits could be delivered through other development proposals on this site.

6.31. Consequently, I agree with Ms Hatton's conclusion that the level of harm is considered to be at the high end of less than substantial and the Appellant has not provided clear and convincing justification for this harm.

Conclusion

6.32. This heritage balancing exercise is straightforward. The public benefits that are relied upon by the Appellant do not clearly or convincingly outweigh the harm. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF (para. 196) requires that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the optimum viable use of that asset. As discussed already, the proposed public benefits are not considered to outweigh the harm caused, and as discussed in reason for refusal 2, the proposed scheme is not considered to represent the optimum viable use of the site. I consider that theatre use could quite likely be the optimum viable use, and that the Appellant has not satisfactorily demonstrated that it wouldn't be.

Failure to provide maximum reasonable amount of replacement cultural or leisure facilities (Reason for Refusal 2)

6.33. Reason for refusal 2 states the following:

“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.”

6.34. It is clear that the Appellant has not demonstrated that the proposals ensure the maximum amount of cultural or leisure facilities. I have read the proof of Mr Jones, who has provided evidence regarding the viability of the appeal scheme. I agree with his conclusions, in particular, that the absence of a proper and meaningful marketing process and full engagement with potential theatre operators/developers means that the Appellant cannot reasonably conclude that the appeal scheme is the optimum viable use. I agree with him (and Dr Wilmore) that the most likely optimum viable use is theatre use, but I also agree, and consider, that the lack of marketing for an alternative cinema use means that that alternative has also not been established.

6.35. I have read the proof of Dr Wilmore who has provided evidence regarding the history of the building and its suitability for conversion back to theatre use, and an analysis of the Charcoalblue report which puts forward one possible theatre layout option. I agree with his conclusions that a single option for a theatre design without any formal consultation or negotiation with a commercial operator seems to be an unproductive and misguided exercise which does not examine the proper market potential. I also agree with Mr Jones and the costs evidence he relies upon and I do not have confidence in the costs analysis of that option when benchmarked. I also consider that the question posed, which is fundamentally “why build a new theatre when there is already a purpose built

theatre” is a sound question to ask, given the evidence available as to the current, purpose-built, heritage asset available and Dr Wilmore’s evidence in relation to the architectural and theatre-soundness of that structure.

6.36. I am also aware of the representations from third parties, including in particular the Theatres Trust who discuss in their Statement of Case their approach by a number of credible and experienced theatre operators expressing interest in the site, and that these operators consider a viable operating model is highly achievable after purchase and capital costs associated with restoration.

6.37. In this section of my proof I will set out the policy context in relation to the above reason for refusal, I will provide an assessment of the proposals against the requirements of policy in regards to cultural and leisure floorspace and I will discuss the matters in dispute in relation to this reason for refusal.

Summary of policy context

6.38. The NPPF recognises the importance of cultural facilities and requires the planning system to account for cultural wellbeing. Paragraph 92 states that decisions should “take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community”. This is echoed in the draft New London Plan, with Policy HC5 requiring development plans and development proposals to “protect existing cultural venues, facilities and uses where appropriate and support the development of new cultural venues in town centres and places with good public transport connectivity”. It is highlighted that London’s competitive land market means that the industry is struggling to find sufficient venues to grow and thrive, and is losing essential spaces and venues for cultural production and consumption (para. 7.5.3), as is the case here.

6.39. The importance of London’s cultural venues is highlighted in para. 7.5.11 of the draft London Plan which describes how London is internationally-renowned for its historic environment and cultural institutions, which are major visitor attractions as well as making an enormous contribution to the capital’s culture and heritage. It notes that “there are many areas in London which are rich in cultural heritage and have a unique cultural offer. These act as key visitor hubs for Londoners and domestic and international tourists and as such should be protected and promoted. They include....the theatres and cinemas of the West End”. Para. 7.5.5 requires boroughs to protect cultural facilities and uses, and support alternative cultural uses. Where a development proposal leads to the loss of a venue or facility, boroughs should consider requiring the replacement of that facility or use.

6.40. The protection of cultural institutions is further promoted by the Mayor’s Cultural Infrastructure plan which states that it is “vital that we support our existing cultural organisations and their premises”. The Council received a representation from the Culture at Risk Office in response to the current appeal

who call for “a full and independent analysis of the viability of a revived theatre use for this listed building, which looks to fully preserve the listed building’s cultural heritage and meaningfully celebrate its legacy as an iconic cultural asset....The unique significance of this iconic venue to the local area, Camden, and London as a whole, calls for all reasonable measures to be taken to preserve and protect its cultural use and heritage. An independent viability analysis of a revived theatre use is necessary to safeguard this important asset and to explore its wider strategic potential, for the benefit of generations to come”.

6.41. Locally, Policy C3 of the Camden Local Plan aims to ensure the Council gives particular attention to the value provided by cultural and leisure facilities and seeks to address their vulnerability from higher land value uses. During examination of the Local Plan prior to its formal adoption, the examiner commented on the proposed wording of policy C3, stating that the borough “has a wide range of cultural and leisure facilities and several important clusters of cultural activities, including Camden Town and part of the West End theatre district. In this context I consider the general strategy in Policy C3 to protect such facilities is justified”.

6.42. Where there is a proposal involving the loss of a cultural or leisure facility, policy C3 requires it to be demonstrated to the Council’s satisfaction that there is no longer a demand. In assessing such planning applications, the Council will consider: (a) whether the premises are able to support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough; (b) the size, layout and design of the existing facility; (c) proposals for re-provision elsewhere; (d) the impact of the proposal on the range of cultural and leisure facilities; and (e) the mix of uses in the area.

6.43. The policy notes that exceptionally it may be practicable for a cultural or leisure facility to be re-provided on-site through redevelopment, or elsewhere in the Borough. When determining the suitability of proposals, 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.

6.44. The policy also states that if a replacement facility is provided, it should be at the same or better standard than the facility which is lost and accessible to its existing users.

6.45. As stated previously, Policy D2 seeks to preserve and, where appropriate, enhance Camden’s rich and diverse heritage assets and their settings, including

conservation areas and listed buildings. Of relevance to this reason for refusal, it states that to preserve or enhance the Borough's listed buildings, the Council will resist proposals for a change of use or alterations and extensions to a listed building where this would cause harm to the special architectural and historic interest of the building.

Assessment

6.46. The Appellant argues that reason for refusal 2 is "entirely misconceived", and "not based on the requirements of its own policy" (para 5.82) as (1) there is no requirement in Policy C3 for the maximum reasonable amount of replacement cultural floorspace to be provided, (2) if it does apply, the test is not whether the maximum reasonable amount is to be provided but whether "it should be at the same or better standard than the facility which is lost and accessible to existing users" (para 5.81), (3) that "the leisure facility is not being lost" (para 5.84) so the policy is "not relevant", (4) that the policy refers to "facilities" and not "floorspace" unlike other policies so there is "clear scope" for a "facility to be replaced (particularly if it is to be enhanced) without being considered to be lost" (para 5.85).

6.47. I do not agree, and consider the Appellant's argument to be misconceived. Of relevance to this reason for refusal, the supporting text to policy C3 states that "When a proposal would result in the loss of existing cultural or leisure uses, we will take into account the size, layout and design of the existing facility, the mix of uses in the area and proposals for the re-instatement of a cultural or leisure facility on-site or elsewhere". It goes on to highlight that the "scope for re-providing cultural and leisure facilities is constrained by factors such as cultural history, including associations (e.g. with prominent people or important periods or events) or experience, where these are intrinsic to a particular premises, as well as the benefits an attraction may enjoy from being located close to other cultural and leisure uses." (para. 4.62).

6.48. The Appellant's core argument is that a replacement facility is being provided, and consequently, policy C3 simply is not triggered. I disagree, and having regard to the explanatory text, paragraph 4.62 of the policy makes it clear that proposals for a re-provided facility will be factored into the overall assessment when considering the loss of an existing facility. It is not logical and it is not the intent of the policy that simply providing a replacement facility of any size/quality/location within a scheme (including, here, simply sunk into basement levels), and where the existing layout and location of the cultural facility in the primary space of the existing building would be wholly changed, would mean the policy doesn't apply and the Council should not consider the loss of the existing cultural facility. I do not agree. In my view, the common sense meaning is that the standard and qualities of both the existing facility and the proposed replacement must both be considered. My view is that the policy is applicable for applications proposing the complete loss of, as well as a reduction in the quality

or size of an existing facility. I have reached this opinion after carefully considering the wording of the policy text and I have confirmed my view with discussions with policy colleagues at the time, who confirmed the intention of the policy is to protect the intrinsic cultural and historic value associated with many cultural venues and facilities which cannot simply be re-provided as part of a replacement or alternative facility or cultural use. Although the appeal proposal includes a cinema within the scheme, the development would result in the loss of the existing cultural *facility*. The site would no longer be a cultural venue and the building would no longer be associated with this use (the importance of which has already been discussed under reason for refusal 1). The building's intrinsic character related to its architectural and cultural heritage would be lost as the site would arguably be a hotel with a small, ancillary, basement cinema.

6.49. The Council's 'Community uses, leisure facilities and pubs CPG' echoes my understanding of the intentions of policy C3, stating that "The ability to successfully re-provide cultural uses is constrained by the difficulty of replicating the experience and atmosphere provided by an established venue". It recognises that many longstanding cultural facilities were designed specifically for art and performance and in heritage terms, their public use for entertainment contributes substantially to their significance, as is precisely the case at the appeal site. Likewise, the CPG recognises that the value of existing cultural facilities can be greatly diminished through conversion to an alternative use, as many cultural and leisure buildings were custom-built for a particular end use and to provide an experience for people using them. In this instance, the building was specifically built for its original theatre use, and as Dr Wilmore explains in his evidence, the building is a very good example of a well-designed theatre. He discusses the benefits of it being an island site, and how it is designed upon the 'iceberg' principle (see para. 7.4), and how many of the existing features could easily be brought back into use, such as the original concrete staircases, stage house envelope and gridiron (paras. 9.3, 13.1, 14.3). He notes that it is an excellent comparator to at least five other theatres which were constructed at a similar time and are still commercially operating (para. 11.3 and 13.13).

6.50. Although a cinema would be re-provided, this would be drastically reduced in size, quality, and experience. The proposed cinema cannot be considered a comparable replacement; it would become a significantly reduced subsidiary use, relocated to basement level and offering a diminished cultural facility and experience.

6.51. In terms of floor area, the appeal site currently provides approximately 3,265sqm of Cinema (Class D2) floor space and ancillary functions and is occupied by Odeon Cinemas. The replacement cinema would measure 1,401sqm according to the application form and planning statement submitted with the application. This compares to 4,230sqm of new hotel floor space, a new ground floor bar and restaurant measuring 505sqm, roof level bar measuring 259sqm and spa measuring 257sqm. This would result in a loss of 1,864sqm of

cinema floorspace. Based on the figures provided by the applicant, the cinema would constitute just 21% of the floorspace of the building. However, an assessment of the submitted floor plans shows that the publically accessible cinema would be at basement level B1 only, which would include four cinema screens, cinema lobby / bar, male, toilets, cinema storage space and circulation. By my measurement, the basement level B1 measures approximately 787sqm (GIA). An additional 485sqm of plant, staff changing rooms, bin store, and cycle store are provided at basement level B2 which serves all uses, including the hotel, bars and restaurant. It is not clear how the proposed cinema floor area of 1,401sqm was calculated. Floorspace aside, of the nine floors proposed, the cinema would comprise a single floor at basement level. This is clearly a significant reduction, and the cultural facility would constitute a very subsidiary function within the building which would be predominantly hotel use.

6.52. Floor space aside, the proposed cinema would be a completely different offering. The current cultural facility would be lost, and replaced by one of a significantly lesser standard. As Ms Hatton discusses in her evidence, “the footfall of a dominant use and large screened cinema, the accompanying communal sense of a shared cultural space...would be lost and along with it, the atmospheric and energetic qualities into the public realm and the experience of the building” (para 3.12). The replacement cinema would not be at the same or better standard than the facility which is lost. It could not replicate the cultural history, experience and atmosphere provided by the established venue. A visitor to the site would enter either via the secondary Stacey Street entrance, or the main Shaftesbury Avenue entrance where they would be greeted by the hotel reception and lobby. The site and entrance would not be perceived as a cultural venue, but rather a hotel lobby with ancillary restaurant and bar. Although the proposals include the reinstatement of poster boxes to the elevation, in my opinion, it would not be immediately obvious where the cinema is, or whether it is accessible to members of the public or hotel guests only.

6.53. Further, I do not agree with the Appellant’s assessment (as set out in paragraph 6.46 above) and I think this is precisely the sort of “over legalistic” analysis which the Court’s depreciate. It is in my judgment clear that this proposal amounts to a literal “loss” of the current cinema, it is clear this is a loss of the “facility” that currently exists, and it is plainly not only a different standard, which in some respects is qualitative and therefore a matter of judgment, but also a quantifiably lower one, in relation to size, floorspace, volume, number of seats, and in my view also, the experiential relationship to the current spatial form and historic theatre volumes is a significant loss. I do not agree it is “enhanced”.

6.54. As such, I maintain that policy C3 is relevant in the consideration of the appeal proposals, and that the development would result in the demonstrable loss of the current cultural facilities. Where this is the case, it must be demonstrated to the Council’s satisfaction that there is no longer a demand.

- 6.55. Should the inspector also agree that the proposals would result in the loss of a cultural / leisure facility, the Appellant asserts that there is “no viable prospect of alternative leisure or cultural use at the site” (para.5.93). I do not agree, and do not consider the Appellant to have demonstrated that there is no such viable prospect. I also do not consider that there is no viable prospect of the existing cinema use to be retained.
- 6.56. The Icen Planning Viability Report dated January 2018 identifies the driver for the appeal scheme is the failure of the current tenant Odeon to maintain the property. Icen also conclude at 2.23 that it is clear from the building condition report completed by Hallas & Co (Appendix 8 of the Icen report and core document G18) that they have neglected the responsibility under their lease terms.
- 6.57. I rely on the evidence of Mr Jones but I agree with him that this conclusion is incorrect. Odeon were obliged under their original lease dated 16 April 1970 for a term of 56 years to fully repair and insure the property. The appellant purchased the property in 2012 and negotiated a deed of surrender with Odeon and also a deed of variation. This document reduces Odeon’s obligations to little more than ensuring the building was wind and watertight, and consequently substantial repairs to the fabric of the building amounting to over £10m have now accrued.
- 6.58. I agree with Mr Jones that the surrender premium of £5m and the reduced repairing obligations were designed to allow the Appellant to bring forward the property for substantial redevelopment. The Appellant is using the accrued repairs as justification for continued cinema use no longer being viable when it is apparent it has been a viable use for more than 40 years. Likewise, a surrender premium of £5m suggests that Odeon considered the continued occupation of the property highly valuable such that it was only willing to vacate the property prematurely on receipt of a payment of £5m and to be excused the obligation to pay £10m in probable dilapidations (para. 2.14 of Mr Jones’s evidence). On this basis, I do not consider the Appellant to have demonstrated that there is no such viable prospect of the existing cinema use to continue at the site. Further, the ICO report, submitted with the application and which seeks to undertake an appraisal of the cinema business potential of the site, is fundamentally not an adequate substitute for marketing and does not appear to properly consider this heritage asset’s potential or location.
- 6.59. Likewise, I do not consider the Appellant to have demonstrated that there is no viable prospect of alternative leisure or cultural use at the site. Whilst I rely on the more detailed evidence of Mr Jones, Mr Prowling and Dr Wilmore, there are, I consider, three particularly key failures.
- 6.60. The first key issue is marketing. The Appellant refers to this at paragraphs 5.94 to 5.96. The Appellant states that no marketing evidence was supplied with

the application with regard to alternative uses because a community facility of a better standard was re-provided, and marketing evidence was therefore not required by policy. The Appellant further asserts that the Council confirmed in writing that no marketing exercise would be required.

6.61. On the first point, policy C3 requires (paras 4.61 to 4.63) that where proposals would involve the loss of a cultural or leisure facility, applicants must demonstrate to the Council's satisfaction there had been a search for alternative cultural and leisure uses for the site through a marketing exercise according to requirements set out in Camden Planning Guidance. As stated previously, although a small cinema is being proposed, I consider the proposals to result in the loss of the existing facility, and therefore a marketing exercise is required by policy to demonstrate that there is no demand for the site by an alternative culture / leisure operator. The policy requires the marketing exercise to be undertaken over a period of not less than 12 months and to be based on a realistic price/rent which is supported by the Council. It states that "alternative uses should support culture and leisure strategies in Camden and London and provide benefit for the local community and protected groups" in recognition of the fact that competition from other land uses could harm the variety, richness and character of Camden and London's cultural offer.

6.62. This exercise was not done, and as such, it was not possible to determine whether the site could accommodate alternative cultural or leisure uses without requiring the introduction of other, non-cultural/leisure uses. As discussed in paragraph 1.23 of the Officer Report, "In the absence of any marketing information, the applicant has not successfully demonstrated to the Council's satisfaction that there has been a search for alternative cultural and leisure uses, or whether there is indeed demand from alternative cultural or leisure operators such as a theatre operator. In the absence of such information, the Council cannot fully assess whether alternative, less harmful proposals would be viable at the site. As such, the proposed loss of D2 floorspace would be contrary to policy C3, and this forms a reason for refusal of the application."

6.63. On the second point, specifically the Appellant's claim that the Council agreed in writing that no marketing was required, I disagree. This is discussed in more detail in section 7 (response to the Appellant's chronology), but at no point did Council Officers explicitly state that no marketing was required.

6.64. Further, in conjunction with the lack of marketing evidence, the Council received representations from the Theatres Trust demonstrating that there was interest from a number of credible theatre operators with specific interest in the appeal site as this site represents one of the last opportunities to provide a large scale cultural venue in the West End. This position is discussed further in the Theatres Trust Statement of Case, who believe the site to "represent the last and only opportunity in the West End to provide a large scale cultural venue such as a theatre with a fly tower, as it still has the volume and footprint to

provide one” (para 1.10). I give weight to such representations from the statutory consultee which are also consistent with indications the Council has received, and consider that such representations also plainly engage the policy framework such that marketing is required.

6.65. As part of the current appeal, the Appellant has prepared the following additional reports:

a) Charcoalblue Report – Test Fit report dated October 2019

b) Gardiner & Theobald Report – Feasibility Conversion to a Theatre Version 1 (based on the Charcoalblue report) dated 9 September 2019

6.66. These reports have been put forward in substitution of a marketing exercise as a means of demonstrating the lack of viability of a potential theatre conversion. I have read the Appellant’s analysis of the theatre transaction evidence, but I agree with Mr Jones that this could only realistically be tested through a proper and sustained marketing exercise and one which was not competing with the property owner’s own aspirations to progress an alternative use which would serve as an active deterrent to operators looking to fund feasibility testing in support of a purchase bid.

6.67. Mr Prowling’s evidence also concludes that there must be considerable caution applied to any financial analysis of the viability of theatre use given the apparently very high estimated costs of conversion and the near total absence of supporting design work underpinning these estimates. A meaningful feasibility exercise is required to determine costs based on an operator specification and a full survey of the property and a design for its conversion.

6.68. In the absence of a proper and meaningful marketing process and full engagement with potential theatre operators/developers, I agree with the conclusions of Mr Jones, Mr Prowling and Dr Wilmore that the Appellant cannot reasonably conclude that the appeal scheme is the optimum viable use especially in light of the appeal scheme’s considerable lack of viability.

6.69. The second key failure is the Charcoalblue Theatre Option. The Appellant refers to this at paragraph 5.98. I rely on the evidence of Mr Jones, Mr Prowling and Dr Wilmore, but agree that the refurbishment costs are not sufficiently justified and may well be lower and also that this is at best one option and there are likely to be other options. As explained by Dr Wilmore, different fit out options vary considerably and depend on the end user requirements. They could range from a less costly “found space” option whereby the building was stripped back to the internal shell, to the other end of the scale where the user may seek to completely restore the original interior. The cost variance between alternative architectural approaches would be “significant” (para. 16.4). This is echoed in Mr Jones’s evidence where he indicates different seat values ranging between

£2,792 per seat to £131,290 per seat (para. 5.17). As such, I do not consider the Charcoalblue report and the single theatre option it explores to be an adequate substitute for a proper marketing exercise, but as Dr Wilmore concludes, “it simply demonstrates a high end option developed purely to support their preferred argument” (para. 10.7 and section 16).

6.70. Thirdly, an offer has been made (para. 5.108 of the Appellant’s statement of case), but no details have been shared. I agree with Mr Jones and rely on his evidence but I consider that this is overwhelming evidence that the property has a positive value in its current condition to at least one operator, and is relevant when considering the building’s optimum viable use (discussed further below). It also demonstrates why a proper marketing exercise is required.

6.71. Further, I do not consider it is helpful that the “one offer” received is not shared in a timely fashion, where the other evidence before me includes the Theatres Trust Statement of Case outlining that there is interest in new theatre provision within the West End from established and reputable theatre operators, and that there is a surplus of productions seeking to go into the West End compared to the number of theatres able to take them. They also state that they have been contacted by eight parties that could be interested in the building as a theatre, and at least six have expressed significant interest in operating this site; four of these already operate multiple venues. Council Officers (both I and Neil McDonald, the South Area Team Leader within the Development Management team at Camden) have also been approached by theatre operators interested in the site. In a phone call I received from a well-known theatre operator, they explained that they saw the site as being very much viable for use as a theatre and would be interested in either working with the freeholder or buying the site to convert it to theatre use (although did not want their objection to be placed on the record to protect their commercial interests). A statement by Neil McDonald is included at appendix A and copies of the emails received are included at appendix B. These have been redacted to protect the commercial interests of the theatre operators. Dr Wilmore also discusses in his evidence that his knowledge of the marketplace suggests that there is significant interest in the site. Given this, it is unclear whether there were other responses which may not have been a “formal offer” but nevertheless indicate interest.

Optimum viable use

6.72. Paragraph 5.56 of the Appellant’s Statement of Case asserts that the quantum of hotel use is “necessary to deliver a viable scheme”. They go on to claim that “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”.

6.73. The NPPF sets out the following policy in respect of optimum viable use:

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be

weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

- 6.74. Mr Jones discusses optimum viable use in detail in his evidence, and the staged approach to its assessment required by the NPPF. Importantly, as set out in the NPPG, the optimum viable use may not necessarily be the most economically viable one, but it is the one likely to cause the least harm to the significance of the asset (paragraph 15). In Mr Jones's evidence, he concludes that continued use as a cinema without redevelopment should be considered as potentially the optimum viable use. He discusses how the Iceni report submitted with the application "serves to illustrate the Appellant's own view that the appeal scheme is not viable by reference to any normal measures of viability which must also question its eligibility to be considered as the optimum viable use" (para. 4.5). In his view, and I agree, it is not logical to conclude that the appeal scheme is the optimum viable use when it is so severely in deficit, when the market for other uses has not been tested through any recognised marketing exercise, and when the existing use which has been sustainable on site for more than 40 years, generates a lesser deficit than the appeal scheme.
- 6.75. Ms Hatton considers the optimum use of the site from a historic perspective within section 7 of her evidence and disagrees with the Appellant's assertion that the current use of the building as a cinema makes a neutral contribution to the significance of the building. Although she considers theatre use to be the optimum use in heritage terms (and I agree), the existing cinema use is also a cultural / leisure use which contributes to the character and significance of the building.
- 6.76. In Dr Wilmore's evidence, he provides a comparison of the seating capacity and theatre characteristics of a number of theatres which continue to operate commercially against the original Saville Theatre, and concludes that "the Saville Theatre is an excellent comparator in terms of both seating capacity and stage dimensions" and that the building could "definitely be made commercially viable" as a theatre. Although the Saville Theatre capacity was based on 1968 statistics, Dr Wilmore concludes there is no reason to suppose that this capacity could not be achieved or exceeded with the correct commercial brief today.
- 6.77. In paragraph 6.11 of their Statement of Case, the Theatres Trust also strongly dispute the Appellant's claim that the quantum of hotel use is necessary to deliver a viable scheme and that the current use of the building in its current form is not viable. They suggest that the Appellant appears to be measuring viability in the context of standard developer viability and commercial profit and return rather than in the context of cultural viability. As they state, "the latter would be considered very differently, at least in part because theatre owners or operators would take a longer-term view of the asset. For example, we understand from conversations with reputable operators that they consider a viable operating model is highly achievable after purchase and capital costs associated with restoration. Within the context of the West End it is also likely

the site would operate within a wider portfolio of theatres thus further improving viability”.

6.78. In policy terms, the proposed scheme is clearly not, in principle, the optimum viable use. Theatre use or other cultural use on the principal floors would be the optimum viable use for this building given the contribution its cultural use makes towards its significance and the policy protection of cultural and leisure facilities. The question then, is whether the evidence demonstrates that in the circumstances, it is to be considered demonstrated. This is quite starkly not the case, considering the evidence provided by the Council’s witnesses and the statutory consultee, the Theatres Trust, the Appellant has failed to demonstrate to the Council’s satisfaction that there is no longer a demand for the existing facility, or for alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough without causing the same level of harm to the significance of the building as the appeal proposals. The Appellant’s own evidence suggests that the appeal proposals would result in a significant deficit, which would be greater than retaining the existing cinema facility.

6.79. As the NPPG states, “if there is only one viable use, that use is the optimum viable use. If there is a range of alternative economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset”. Overall, I do not consider the Appellant to have sufficiently demonstrated that the proposed scheme is the optimum viable use, nor that an alternative culture/leisure led proposal would not be viable without requiring the extent of harmful development as currently proposed.

Conclusion

6.80. The proposals would result in the loss of the existing cultural facility. The Appellant has not explored to the Council’s satisfaction whether the site could support an alternative cultural facility. With a lack of formal marketing over a period of at least 12 months, it is impossible to determine whether an alternative cultural use would be viable, and in fact, all evidence is suggesting theatre use would be, with significant interest from a number of different theatre operators. The proposed scheme would result in a significant financial deficit, would not be the optimum viable use and would result in harm to the designated heritage asset. As such, I maintain that the proposals are contrary to both policies C3 and D2 of the Camden Local Plan. Furthermore, I do not consider that the loss of cultural floor space is outweighed by the delivery of other uses at the site, including hotel, restaurant, bar and spa.

Failure to provide sufficient information to demonstrate that the proposed roof top plant would operate in accordance with the Council's minimum standards or that it would not harm the local residential environment (Reason for Refusal 3)

6.81. Reason for refusal 3 states the following:

"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".

6.82. Reason for refusal 3 has been overcome following the submission of additional information by the applicant, and their agreement to conditions requiring the proposed plant to operate in accordance with Camden's noise standards (conditions 13 – 15 in the draft planning conditions in section 11).

7. COMMENTS ON APPELLANT'S GROUNDS OF APPEAL

7.1. Notwithstanding the comments already made in the paragraphs above in relation to the reasons for refusal, a response has been made below to the Appellant's grounds of appeal. The grounds of appeal are made within the 'Statement of Case' dated 18th December 2019. The statement sets out a chronology of events and addresses each reason for refusal. I have responded to each within the following paragraphs.

Chronology (section 3 of Appellant's Statement of Case)

7.2. As the Appellant's sets out in paragraph 3.1 of their Statement of Case, the Council's advice from the initial pre-application inquiry is that the loss of the cinema was considered acceptable subject to the provision of a replacement leisure facility of a similar floorspace.

7.3. In paragraph 3.3 the Appellant highlights that the Council initially stated that "it may be possible to accommodate significant additional height at roof level asymmetrically"; however, the Appellant fails to mention - as shown in the Appellant's own meeting minutes (appendix 5.3 of their Statement of Case) – that officers subsequently confirmed a change in opinion and that "the position now is that 2-3 storeys is likely to be the most appropriate scale of development" and importantly, only if it is not "*feasible or appropriate to work within the existing building envelope*" [emphasis added]. This was further expanded upon in the second pre-application advice report dated 29/09/2017 which stated officers had "re-visited our previous commentsit should be noted that the officers have

significant reservations at there being a solution which adds such bulk and additional floorspace without causing substantial harm; and the designs submitted so far do not dissuade officers from this position". My reading of the previous pre-application reports is that Council officers never agreed the principle of the additional height prior to the submission of the current proposals. The pre-application advice report concluded that "...significant mass at main roof level is sought, which is at odds with the very limited form and amount of additional mass the Council considers the host listed building to be capable of receiving".

7.4. In paragraph 3.9, the Appellant claims that Officers suggested the proposals should provide a cinema rather than a theatre. However, from my reading of previous pre-application advice and meeting minutes, I cannot see any evidence that this is the case. In the initial pre-application advice report, officers highlighted issues that would need to be considered should a theatre use be proposed, but did not state that a theatre was inherently unacceptable or not supported. The Appellant goes on to state that officers requested that a replacement cinema be provided within the development, "despite this not being a specific policy requirement". I would disagree that considering a cultural facility's replacement is not a policy requirement. Policy C3 protects cultural and leisure facilities, and the request to retain a cultural facility at the site is in line with this policy. As set out in the Council's first pre-application advice report dated 02/12/2016, "The re-provision of a theatre or cinema use at the heart of the scheme and within the historic building's principal floors and volumes is critical to conserving its special interest, and is a public benefit inseparable from realising the building's optimum viable use....these uses should not be non-specialist spaces of low quality confined to the lower floors" (para. 7.7). As mentioned earlier in the same report, the "potential 'loss' of the cinema in situ could be considered acceptable, in the context of a 'replacement' leisure facility of a similar floorspace (including a multi-functional arts venue) which also serves the local community." (para. 6.1). Clearly, Officers were not prescribing what the proposed cultural offer must be, just that a cultural/leisure offer must be the predominant use within the building, located on its principal floors.

7.5. In paragraph 3.14, the Appellant discusses the DRP feedback and suggests the panel were comfortable with the proposed height and scale of the roof extension. The Appellant's selective quotation from the DRP report fails to include the panel's concerns that "the cinema function will not be viable unless it is fully embedded into the building's design", and that the form and expression of the extension needs "further thinking" so that it has a "clearer relationship with the existing building below" (paragraph 4).

7.6. In paragraph 3.17, the Appellant discusses a meeting with the Council's Economic Development Officers and notes the relevant officers were supportive of the scheme and would be happy to work with the applicant to ensure apprenticeships were provided. I recognise the benefits the scheme could

provide in terms of employment and skills-related opportunities (provided an Employment and Training Plan was secured by S106, as discussed in section 14 of the officer report), but these would not outweigh the harm caused in other respects.

- 7.7. The second DRP review took place on 13 April 2018 and the Appellant again selectively quotes from the report in paragraph 3.19 stating that the panel thought that the revisions to the design of the roof extension were an improvement. Although the proposals may be considered an improvement, the Appellant, importantly, doesn't mention that the panel also stated that "more work is needed before it can offer its support for the application" and that the proposals needed more detail and refinement. The panel also noted that the "dedicated cinema entrance on Stacey Street may undermine the primary function of the building. It is important that the main building entrance reads as the entrance to a cinema, as well as to the hotel".
- 7.8. I do not agree with the Appellant's claim at paragraph 3.21 that "it was confirmed that officers were working towards having the scheme determined at the 28 June 2018 Planning Committee". The Officer actually advised that the scheme would be "discussed at an internal meeting on 17th May, following which I can confirm officers recommendation. Notwithstanding the meeting on the 17th, we will continue to work toward a PC date at the end of June in any case". As a planning officer, in my view this is an indication that officers had not taken a view yet.
- 7.9. The case officer subsequently confirmed in an email dated 23 May 2018 that the application would not be recommended for approval at Planning Committee as the proposals were considered to harm the special architectural and historic interest of the building, and the necessity for works which result in less than substantial harm had not been sufficiently demonstrated. In paragraph 3.23 the Appellant states that officers requested a marketing strategy to demonstrate why no additional cinema operator would be willing to refurbish and occupy the building. This is not correct. The officer's email of the 23 May refers to cinema / leisure operators in all instances, not just a cinema operator.
- 7.10. In my opinion, this chronology demonstrates Camden's approach of working with developers to get applications 'over the line' for approval. Despite concerns regarding the level of harm considered to result from the proposals and lack of information provided, officers outlined the outstanding information required in order to be able to make a full assessment and what was considered necessary to provide or be amended in order for officers to be able to support the proposals. The Council's aim is always to proactively work with applicants towards the approval of sustainable development, evidenced by the Council's Authority Monitoring Report. The report shows that in 2017/2018 91% of major applications were approved (the relevant extract is provided at appendix C). 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%. Camden is committed to sustainable development, and regrettably this application was refused because it was not considered to be so. However, throughout the course of the application, officers sought constructive engagement, for example, see paragraph 3.39 of the Appellant's statement of case describing the officer's request that the applicant re-engage with officers to explore alternative designs and paragraph 3.49 describing officers agreeing to hold off determining the application whilst the Appellant's new architect worked up a revised design approach in the hope of a positive outcome for all.

7.11. In paragraph 3.26 the Appellant refers to an email from the case officer dated 28 June 2018 stating that "a marketing exercise may not be required". What they do not mention is that the officer went on to say it may not be required "dependent on the conclusions of the heritage consultant" and also that "We would however expect the applicant to provide Camden with any correspondence from Odeon which sets out in as much detail as possible the Odeon's ongoing requirements and why the existing building or site cannot satisfy these".

7.12. In paragraph 3.29, the Appellant goes on to state that their representatives understood at this time that the independent heritage review was the only outstanding matter and in paragraph 3.30 that officers were targeting planning committee on 20 October 2018. Again this is inaccurate. The Officer previously advised that marketing may not be required dependent on the results of the heritage review, and said in his email of 31/08/2018 that "notwithstanding the heritage review, a further week would not impact a potential PC date of the 20 October". Although the Appellant claims that there was an expectation this would lead to a recommendation for approval (para. 3.36), this wasn't agreed by officers at any point. Although potential planning committee dates were provided this was always caveated on the outcome of the various reviews and audits and internal design meetings.

7.13. In paragraph 3.32, the Appellant discusses the independent heritage report (core document G13) and correctly states that Council officers did not believe the report addressed the brief in full. This is expanded upon in paragraphs 2.47 to 2.53 of the Officer's report (core document G15). Despite requests for a more detailed response, the review did not directly address the majority of the queries set out in the brief, nor did it provide an assessment of the Appellant's identified and suggested costs. I would maintain the inadequacy of the heritage audit report is further exemplified by the fact that it missed the remaining historic fabric now known to exist and as discovered during the course of the appeal.

7.14. Paragraph 3.43, again is not accurate. Officers had not "confirmed...on balance" that they would "accept the land use position", rather it says that officers would move forward "with a view to accepting on balance....while continuing to work with you to mitigate the harm".

7.15. The Appellant concludes their chronology in paragraph 3.58 by stating that

“Notwithstanding all these efforts Camden ceased negotiations in June 2019 and both the planning and listed building consent applications were subsequently refused”. In my opinion, the applicant has summarised events inaccurately and the points pulled out in the Appellant’s chronology must be read in context, which ultimately show that the Council sought to engage with the Appellant to work towards an acceptable solution for both parties. Ultimately an agreement could not be reached and new information was submitted by the Theatres Trust, a statutory consultee, suggesting alternative viable uses from credible operators. In the absence of any marketing evidence and the Appellant clearly stating they would not provide this (para. 3.25 of their statement of case), refusal was considered to be the only option to stop unnecessarily prolonging the determination of the applications.

The Case of the Appellant (section 5 of Appellant’s Statement of Case)

The development plan

- 7.16. The Appellant provides in paragraphs 5.2 to 5.32 a list in support of why they claim the proposed development is in accordance with the development plan. I do not disagree that elements of the proposal would be in accordance with the development plan, and these areas of compliance were taken into account in the overall planning judgement. For example, the provision of a restaurant / bar would be in accordance with policy TC4 (para. 1.26 of officer report), the principle of a hotel in this location would be in accordance with policy E3 (para 1.28), and the proposed basement excavations would be in accordance with policy A5 (para. 4.7). There are also certain elements which were considered could become compliant by way of condition, for example, details of tree protection measures, details of PV panels, details of wheelchair accessible rooms and details of a waste management plan.
- 7.17. However, the Appellant’s assessments are not all accepted in the way presented, for example, it is noted under paragraph 5.25 of the Appellant’s statement of case that the “use of bird and bat boxes on the proposed development would seek to improve biodiversity outcomes on site”. This is not the case. As discussed in paragraph 9.5 of the officer’s report, the proposals do not include any plans for biodiversity enhancements and as such, the development was not compliant with policy A3 (Biodiversity); however, it was judged that the scheme could become compliant by way of the submission of additional details of bird and bat boxes and roof level planting which would need to be secured by condition.
- 7.18. The Appellant’s assessment under policy C3 (para. 5.5) is not agreed, namely, that the development would re-provide a cinema of a greatly improved standard to the existing cinema. As discussed in more detail under reason for refusal 2 above, the proposals are considered to result in the loss of the existing facility and experience.

7.19. In paragraph 5.4, the Appellant argues that the proposed development would make the best use of the site, in accordance with policy G1. It is not accepted that that the proposed development would make “best use” of the site; however, the key conflict is considered to principally be with policies C3, D1 and D2, as there is no objection to the principle of a hotel use on this site. In terms of the best use of the site, the proposed development is not considered to represent the optimum viable use (discussed in more detail in paragraphs 6.72 to 6.79 above).

7.20. In paragraph 5.15 the Appellant states that 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”. I would agree that the proposed extension would result in harm, but do not agree with their assessment that this harm is outweighed by significant public and heritage benefits. This is discussed further in paragraphs 6.27 to 6.31 above.

Reason for refusal 1

7.21. The applicant submits that “no harm is caused to the heritage asset, but that the significance of 135-149 Shaftesbury Avenue will in fact be enhanced as a result of the proposals” (para 5.36). This appears to be in contradiction to paragraph 5.15 where the Appellant concludes that the proposals would result in “some harm to the listed building as a result of the introduction of development above the theatre box”. It is not agreed no harm is caused, as already discussed. It is also not agreed that the significance will be “enhanced” as a result of the proposals.

Height, Mass, Detailed Design and Materials

7.22. In paragraph 5.39 the Appellant claims that “the key elements of the building’s significance are restricted to its exterior, with some elements being more significant than others”. As previously discussed, this is incorrect. Cultural use is key to the building’s significance. The Appellant repeatedly ignores these elements.

7.23. The Appellant states that the design was developed in close consultation with Camden’s Design Officer (para 5.40). This is not disputed. The Council will always work proactively with applicants in order to ensure the best possible design which meets the needs of applicants as well as development plan policies (see para. 7.10 above). However, in this instance, despite working closely with the Appellant, the detailed design was not considered to be of an acceptable standard for the Council to be able to support. The Appellant’s apparent recognition of this is suggested by their willingness to appoint a new executive architect to work up a revised design approach (para. 3.49 of Appellant’s

statement of case).

7.24. The interventions discussed in paragraph 5.41 in the Appellant's statement of case are recognised as positive heritage benefits, but this fails to recognise the harm caused by the other interventions, see paragraph 6.27. As such, the Council does not agree the roof level addition would "complement the existing building" (para 5.42); hence reason for refusal 1. The roof extension causes harm.

7.25. In paragraph 5.43 the applicant discusses the chosen materials for the roof extension and states that "The chosen materials and the number of joint lines allow the roof extension to appear as a veil...The architectural language was endorsed by Camden's Design Review Panel Chair's Review by referencing a similar building as a comparator." I do not agree. The second DRP report noted that "more detail is required on the design of the additional upper storeys, to demonstrate how the external glass envelope for roof extension will appear and function", that "the details of the way the glass box sits on or behind the brick parapet of the existing building needs refinement", and "more detail of construction and materials is needed to demonstrate the quality and viability of the amended design...this level of detail is needed at planning stage to assure Camden that the designs can work. The quality of detail design of this element is critical to the successful execution of the extension." My reading of the DRP comments is that whilst they considered the principle of a glazed extension could be acceptable at the site, the proposed details were not of a standard to which the DRP could support, and the acceptability of the design was still to be demonstrated.

7.26. Under paragraphs 5.44 and 5.45 the Appellant provides their assessment of the effects of the proposals on the building's significance, weighting these as either harmful, beneficial or neutral. Only the roof extension is considered harmful so they conclude that "when considered together...lead to a clear, balanced judgement of enhancement of, rather than harm to, the significance of the designated asset". I consider this in more detail in my assessment under reason for refusal 1 above and after considering the evidence provided by Ms Hatton and come to a different conclusion in terms of the resulting harm; however, notably the Appellant does not assess the loss of the cultural use of the building's principal floors which is considered to cause fairly significant harm (towards the higher end of less than substantial harm). I also consider that where proposals involve a heritage asset, assessment of degree of harm is important, and simply assessing a change as "harmful, beneficial or neutral" does not properly reflect how a heritage asset may be harmed by development.

Hotel Use

7.27. In paragraph 5.47 the Appellant submits that the hotel is not in fact the 'main' use and rather forms part of a "considered mix of commercial and cultural uses".

I do not dispute the mix of uses proposed but would disagree with the Appellant that hotel use is not the main use and in my opinion, the proposed building is, and would be read by most passing members of the public as a hotel. As highlighted in paragraph 6.51 above, the proposals would provide 4,230sqm sqm of hotel use out of a total of 6,652sqm (63.6%), and the hotel lobby would be one of the first things viewed as one walked into the entrance. The building is currently essentially wholly in cultural use with ancillary supporting functions (such as office space) and is being converted to a hotel-led development. The Appellant argues that the new mix of uses will “better contribute to the building’s special interest as a building designed for entertainment...the mix of uses will reintroduce this character, which has been lost under the current cinema use”. I do not agree as discussed in my assessment under reason for refusal 2.

7.28. The Appellant continues in paragraph 5.48, stating “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.” There is no objection to the introduction of new A3/A5 uses or a spa, as discussed in paragraphs 1.24, 1.25 and 1.29 of the officer report, and it is recognised that these uses can be a valuable introduction to increase revenue and activation; however, it is undeniable that the hotel use would constitute a significant part of the building and its principal use. Of the eight above ground floors (ground to seventh) the hotel rooms would be located on floors 1 to 6 and would be inaccessible to the public.

7.29. In paragraph 5.49 the Appellant asserts that any significance is entirely connected to the exterior elements of the building, and although they acknowledge the building’s former use makes a contribution to its significance, they consider the current cinema use makes a “neutral contribution to its special interest”. The Council disputes this (see in particular paragraph 6.15 and 6.17 above).

7.30. The Appellant goes on to suggest that the combination of uses will support the “regeneration of the ‘spirit of place’” and “produce activity and liveliness” (para. 5.50) and that the contribution of hotels to the culture and leisure environment has evolved in recent years so that their ancillary facilities are now “vital, animated destinations” (para. 5.51). I disagree and maintain that in this instance, the ‘spirit of place’ is closely linked to the building’s cultural use, as Dr Wilmore and Ms Hatton demonstrate in more detail. For example, as Ms Hatton describes in her evidence, the experience of the building as an entertainment venue starts when the building first comes into view and “The large rectangular form and decorative frieze create a dramatic vision. The grandeur of the entrance generates excitement and the blind elevations create the feeling of another world taking place inside the building.” She describes how “The gathering of crowds and the shared exhilaration prior to screening or show time

creates an ambiance and energy one can only associate with spectator entertainment. This energetic quality permeates through Shaftesbury Avenue and the surrounding streets due to the number of entertainment venues creating the unique West End atmosphere.” (paras. 2.60 and 2.62). Dr Wilmore’s evidence demonstrates how the building would be read, and how it was perceived contemporaneously, through its location, design and frontage lighting. As such I disagree with the Appellant, and do not consider that the proposed development, which would largely be read as a bar/restaurant and hotel, could create the same “spirit of place”.

7.31. Although I agree that nationally, the offer provided by hotel facilities such as bars and restaurants may have changed in recent years, I consider this point to be less applicable in this instance given the West End location of the site. In my opinion, it seems unlikely that many hotel guests would stay at a hotel on Shaftesbury Avenue within the West End’s Theatreland, and then stay within the hotel to use the cinema and bar/restaurant facilities. Surely a visitor to the West End would be seeking to visit a wide variety of cultural and leisure facilities and venues both within the area and across London.

7.32. This area of central London has always been a cultural destination during both the day and night time, and I do not consider the proposed mix of uses to be any more likely to attract interest than a solely cultural use, nor that they would enhance the offer and dwell time over a solely cultural use, and I do not consider it would “draw crowds” in the way a dominant sole cultural use can do. I agree with Dr Wilmore as to the activity and excitement associated with Theatre use.

7.33. The Appellant concludes this section in paragraph 5.56 by stating “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.” This point is discussed in detail in Mr Jones’s proof, but I agree with his evidence, including that of the Appellant’s own evidence, that the level of hotel floorspace would not deliver a viable scheme, it would be in significant deficit, and that the proposed scheme would in fact result in a greater deficit than retention of cinema use at the site. I also agree with his wider point about “optimum viable” use in NPPG terms and as discussed under reason for refusal 2, that the hotel scheme is not the optimum viable use.

Impact on Listed Building

7.34. In paragraph 5.60 the Appellant refers to the independent heritage report and claims that the “Council has not criticised this conclusion” and discusses the fact that the officer report refers to the conclusions of the heritage report. I consider the Appellant to be misreading the officer report and assigning meaning where there is none. By simply highlighting the conclusions of an independent report

does not confer agreement with them. I believe it is clear in the delegated report that officers did not consider the report to have met the brief. The officer report clearly states “the report provided the following conclusions” before setting these out as a number of bullet points. The report does not state that the Council agrees with these conclusions, but rather, goes on to say that “Despite a request by officers for a more detailed response, it was not considered that the report responded to the brief”. In paragraph 5.61 the Appellant concludes that the Council’s “own evidence therefore stated that the relevant statutory rest was met. For this reason alone, much of the first reason for refusal is entirely unsustainable”. Although commissioned by the Council, Officers do not agree with the conclusions of the report, nor consider it to have met the original brief.

7.35. I disagree with the Appellant’s assessment that any harm would be at the bottom end of less than substantial (para. 5.64), and in accordance with the conclusions of Ms Hatton, consider it to be at the higher end of less than substantial (see paras 6.23 to 6.35 above).

7.36. The Appellant states that the proposals secure the optimum viable use of the building “on the basis that they represent the least harm to the asset while securing a use which will be viable on an ongoing basis” (para. 5.66). As discussed above, the proposals are not considered to secure the optimum viable use (see Mr Jones’s evidence and paragraphs 6.72 to 6.79 above). Likewise, the proposals would not represent the least harm (see my evidence and Ms Hatton’s evidence in particular). As set out in Mr Jones’s evidence, retaining the existing cinema would result in less deficit than the appeal proposals and significantly less harm; however, as Ms Hatton explains, and Dr Wilmore’s evidence supports, and I agree, the optimum viable use is likely to be theatre on site.

7.37. On this point, the Appellant claims 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” (para. 5.69). Mr Jones’s evidence directly contradicts this, as outlined above.

7.38. In paragraph 5.78 the Appellant provides a list of what it claims to be public benefits that outweigh any identified harm. This is discussed in more detail in paragraphs 6.27 to 6.30 and the planning balance in section 9, but in summary, the public benefits that are relied upon by the Appellant do not clearly or convincingly outweigh the harm and the proposed scheme is not considered to represent the optimum viable use of the site.

Reason for refusal 2

7.39. I consider the majority of the points the appellant raises as part of my consideration of reason for refusal 2 in section 6 above. However, I disagree with the Appellant’s claim in paragraph 5.82 that the Council is “entirely misconceived”, and consider the Appellant to have misunderstood and

misapplied the policy context. As discussed in greater detail in section 6, the existing cultural facility would be lost. Although a new smaller cinema is proposed within the re-modelled basement, it is no longer the dominant, but rather a significantly reduced subsidiary or ancillary use. The building would no longer be a cultural facility or venue.

7.40. In paragraph 5.90 the Appellant asserts that the mix of uses will “contribute to the on-going operation of a cinema in this location”, however, as Ms Hatton discusses, it would be located in the basement which is the least significant part of the building and with a vastly reduced floor space. She provides the Charlotte Street Hotel as an example of how basement cinemas within hotels are very much perceived as hotels and not cinemas within the streetscene (para. 3.28). In that example, the cinema is generally hired out for private events and screenings and corporate events. It is possible that the basement cinema in the current proposals would end up being used in the same way. In this case, the cinema is relegated to the basement and will have little presence within the building, leaving the long-term viability of the cinema uncertain.

7.41. In paragraph 5.91 it is noted that the Appellant proposes a “second viewing cinema”, with “premium” facilities. It is considered that there is a loss of a cultural and leisure facility for the reasons set out above. Whether or not it is “enhanced” is at best a matter of judgment, but in my view, it is not an “enhancement” to substantially reduce the number of seats and the qualitative cinema experience will be decreased. The experience will be that of an ancillary, small, basement cinema to a primary hotel use, which is precisely what it is.

7.42. It is noted that the Appellant’s analysis has taken place on the basis that “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” (para. 5.92). I disagree, for the reasons set out above and consider the suggestion that the existing cinema use does not contribute to the significance or importance of the building to be incorrect.

7.43. Further, I consider the analogy drawn at paragraph 5.92 to fail to understand the significance and sense of place in the engineering solutions and “sense of entry” of the previous Shaftesbury Theatre, (see further paras. 5.7, 6.1, 6.2, 7.3, 7.5 of Dr Wilmore’s evidence and para. 2.29 of Ms Hatton’s evidence). The fact that a grand staircase lead down to the stalls in the Shaftesbury Theatre was experiential – it was part of the whole experience of moving into the grand open space within the theatre and those volumes, and the descent also made use of the salon/bar area as a basement attraction and desirable feature in its own right as part of the cultural offer. In this case, a descent will go down into a basement, and then into small cinemas. The dominant use is the hotel on the principal floors. Putting in a staircase does not change this, and they are not sensibly comparable.

7.44. The Appellant describes in paragraph 5.98 their instruction of Charcoalblue to “assist any marketing exercise”. As discussed in this is not considered a sufficient substitute for marketing, and no meaningful marketing exercise was conducted. It is noted that despite the lengthy delay, and the reported pressures of the theatre industry resulting from covid-19 which of itself might justify a longer marketing period, there has still not been a sensible marketing exercise

8 SECTION 106 PLANNING OBLIGATION

8.1 Reasons for refusal 4 to 14 relate to the failure of the Appellant to enter into a Section 106 legal agreement to secure various elements. The Council and the Appellant are working together to agree a section 106 legal agreement to address the relevant reasons for refusal 4 to 14 to ensure the development is acceptable on these grounds should the Inspector allow the appeal. It is hoped these matters can be resolved before the public inquiry to allow an agreed position to be presented to the Inspector.

8.2 Evidence will be provided to demonstrate that the Heads of Term secured as part of the S106 are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010, in particular Regulation 122(2), which require that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 54 - 57).

9 PLANNING BALANCE

9.1 The determination of the appeal against the refusal of planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise, as required by the Planning and Compulsory Purchase Act 2004 (Section 38(6)), Town and Country Planning Act (Section 70(2)) and the NPPF.

9.2 The determination of the appeal against the listed building consent refusal should be made in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990, in particular the statutory obligation under s.16(2) which states that in considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

9.3 I address the ‘planning balance’ and the weight I attach to development plan policies and material considerations in this Section of my evidence.

The Development Plan

- 9.4 Within our communal proofs, the Council has identified and substantiated that the appeal proposal does not accord with the development plan, including Local Plan policies D1 (Design), D2 (Heritage) and C3 (Cultural and leisure facilities).
- 9.5 My proof deals principally with the harm arising from the loss of the existing cultural / leisure facility and the inadequacy of the proposed replacement cultural facility, and an assessment of the proposals against the requirements of policy in regards to cultural and leisure floorspace. I have also considered the evidence provided by Dr Wilmore on matters related to the suitability of the site for conversion back to theatre use, and his assessment of the Charcoalblue theatre option presented in the appellant's Statement of Case; namely, that it is of limited value given that it presents just one theatre option, when there are a number of different fit out options with a wide range of resulting costs, and the final design needs to be one which is specified by a theatre operator, not a landlord. The proposals are not considered to have met the requirements of policy C3 and have not satisfied the Council that the existing use could be retained or alternative cultural use provided at the site. These matters have been attributed significant weight.
- 9.6 My colleague Ms Hatton has identified the harm arising to the Grade II Listed host building, local streetscape and the setting of the adjacent Denmark Street and Seven Dials conservation areas from the detailed design of the appeal proposal and its height, scale and massing, as well as the change of the use of the building's principal floors away from a cultural use. I agree with her analysis and give the identified harm "considerable importance and weight" in line with the Court of Appeal decision in Barnwell Manor (core document E3). I note conflict with development plan policies identified by Ms Hatton (such as Camden Local Plan policies D1 and D2), and I have attributed significant weight to this harm.
- 9.7 I have also considered the evidence provided by Mr Jones from BPS Chartered Surveyors in respect of the viability of the appeal scheme and the potential viability of cinema and theatre uses. I concur with his views and have allocated significant weight to the harm outlined in his proof. The appellant has not demonstrated that the proposed development constitutes the optimum viable use, and Mr Jones's evidence suggests that the retention of the existing cinema use would be a more viable one. In the absence of a proper and meaningful marketing process and full engagement with potential theatre operators, the appellant cannot reasonably conclude that the appeal scheme is the optimum viable use, especially in light of the appeal scheme's considerable lack of viability and the fact that it is proposed as a replacement for a use which has been sustainable on site for more than 40 years and which generates a lesser deficit than the appeal scheme. As such, the proposals conflict with development plan policies, including Camden Local Plan policies D2 and C3.
- 9.8 Each of the reasons for refusal are considered to be sufficient to justify the

refusal of the appeal proposal in their own right. I have taken in to account areas of compliance with the development plan, such as the introduction of a mixture of uses which in and of themselves are compliant with policy G1, as well as the other elements as set out in paragraph 7.16, but overall, it is my view that the appeal proposal as a whole does not accord with the development plan for the reasons addressed within the Council's case. The benefits delivered by the scheme, which are summarised below, when taken together as other material planning considerations do not indicate that planning permission should be granted.

Material considerations including the NPPF

9.9 I discuss public benefits below and I recognise that certain elements of the appeal scheme are policy compliant (as above) and that they would contribute, in part, to the aims and objectives of the NPPF; however, in my view the public benefits would be insufficient to outweigh the less than substantial harm identified.

9.10 The merits of the appeal proposal are recognised and include that the development would provide heritage benefits including: the repair and consolidation of the Bayes frieze and roundels; reinstatement of the original recessed poster boxes to Shaftesbury Avenue façade; reopening of the arched window over the main entrance; structural works to arrest and redress structural failings; and exposure of the building's internal front wall and it's decoration with full-scale section of the original auditorium.

9.11 I have addressed these in a specific heritage context after considering Ms Hatton's evidence (para. 6.22 onwards) and concluded that these heritage benefits would not outweigh the less than substantial harm caused through the inappropriate design of the roof extension, the loss of the existing cultural facility and its replacement with a facility of a lesser standard, and the change of use of the building away from a predominantly cultural use. Furthermore, many of the identified benefits could be secured by a proposal that results in less harm to the designate heritage asset.

9.12 In the overall planning balance, I would make similar points. Having regard to the overall planning balance in that context, the key points I would make are (and seeking to concentrate on those which are additional or particularly relevant to the overall planning balance), that although the Appellant identifies a number of apparent public benefits delivered by the proposals (paragraph 5.78 of their statement of case), I do not consider these to be significant. The most significant of these are, in my view, enhancements to the public realm, improvements to the permeability and activation of the ground floor frontages, the contribution to the local economy from the new commercial uses, and the heritage improvements. Overall, I do not consider these benefits carry significant weight and I assign only low weight to all of these benefits. Although the proposals could bring some

benefit in terms of employment and visitor spend, there are no additional community benefits or innovation which would represent a benefit of significant weight. The benefit is compliance with policy, but does not go further than this. The employment benefits offered would also be at the cost of the existing cultural facility, causing heritage harm. The public realm 'improvements' are very limited indeed and consist of minor widening of two pavements, as such this would carry limited weight as would the improvements to the permeability and activation of the ground floor frontages, which again also bring with them harm, particularly to the Frieze and the significance of the frontage through the change of use. The heritage improvements as listed in 9.10 are recognised; however, such benefits could be delivered through other development proposals on this site. I therefore assign only moderate weight to this benefit.

9.13 In relation to paragraph 5.33 of the Appellant's statement of case where they suggest "the development comprises sustainable development in that it contributes to the economic, social and environmental roles of development", I do not consider the appeal scheme to represent sustainable development.

9.14 Of the three sustainability strands set out in the NPPF (economic, social and environmental), I consider the development to provide only modest economic benefit. In the environmental strand, the disbenefits outweigh the benefits, quite clearly in my view. The heritage benefits provided would not outweigh the less than substantial harm identified as arising through the inappropriate design of the roof extension and the change of use of the building away from a predominantly cultural use. Further, the proposed development is not considered to represent the optimum viable use. In the social strand, the proposals would result in the loss of the existing cultural facility and its replacement with a facility of a lesser standard.

9.15 I consider the appeal scheme conflicts more generally with the aims and objectives of the NPPF, in particular:

1. Section 2: 'Achieving sustainable development', particularly the requirement to support strong, vibrant and healthy communities by meeting cultural well-being needs and protecting and enhancing our natural, built and historic environment.
2. Section 8: 'Promoting healthy and safe communities' and the requirement to improve the social and cultural well-being for all sections of the community;
3. Section 12: 'Achieving well-designed places', particularly for development to be sympathetic to local character and history, and be visually attractive as a result of good architecture;
4. Section 16: 'Conserving and enhancing the historic environment' and the requirement to provide clear and convincing justification for any harm to the significance of a designate heritage asset; and where less than substantial harm is identified, for this to be weighed against the

public benefits of the proposal including, where appropriate, securing its optimum viable use.

9.16 Whilst partially reflected in section 16 (para. 193), the requirement to give great weight to the conservation of heritage assets is also set out in Section 16, of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”) which provides that in considering whether to grant listed building consent for any works to a Listed Building special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The effect of this section of the Listed Buildings Act is that there is a statutory presumption in favour of the preservation of Listed Buildings and their settings. Considerable importance and weight should be attached to their preservation. A proposal which would cause harm should only be permitted where there are strong countervailing planning considerations which are sufficiently powerful to outweigh the presumption.

9.17 I attach significant weight to these conflicts, and in particular in my overall balancing act, that the NPPF identifies protecting and enhancing the natural, built and historic environment as one of three overarching objectives of the planning system (NPPF para. 8). I also attach significant weight to the harm that these proposals cause to the heritage asset through the change of use, as well as the detailed design, which will undermine the significance of the asset and harm how the asset sits in and relates to the public realm on a principal avenue, Shaftesbury Avenue, in theatreland, and how it relates to associated adjacent Conservation Areas. I consider that the Appeal Scheme is in very substantial conflict with these objectives and does not represent sustainable development.

9.18 This applies to both Reasons for Refusal 1 and Reason for Refusal 2. Each of the reasons for refusal are considered to be sufficient to justify the refusal of the appeal proposal in their own right. The appeal proposal does not accord with the development plan (for the reasons addressed within the Council’s case) and the other benefits, summarised above, when taken together as other material planning considerations, do not indicate, on balance, that planning permission should be granted. As such, I conclude that planning permission should be withheld and I invite the inspector to dismiss the appeal.

10 CONCLUSIONS AND SUMMARY

10.1 In conclusion, I have demonstrated that the appeal proposal fails to accord with the development plan policies identified in the reasons for refusal (as updated), national policy, and regional and local policy guidance. Each of the reasons for refusal (that have not otherwise been agreed or overcome through the SoCG or the completion of a section 106 legal agreement) are considered to be sufficient to justify the refusal of the appeal proposal in their own right, and together represent an appeal scheme that would not represent sustainable development as defined within paragraph 8 of the NPPF.

10.2 Here I will conclude and summarise my evidence by addressing each reason for refusal that has not otherwise been agreed through the SOCG or S106.

Impact on the significance of host listed building and nearby Seven Dials and Denmark Street Conservation Areas (Reasons for Refusal 1)

10.3 My colleague Ms Hatton, Camden Conservation Planning Officer, has addressed this reason for refusal in her proof of evidence and has provided detailed evidence regarding the significance of the host listed building and Conservation Areas, as well as an assessment of the proposed design and architectural character and the resulting impacts of the development on the significance of the designated heritage assets. Her evidence is supported by a design assessment by the Council's Senior Urban Design Planner Mr Crockett.

10.4 The proposed detailed design, form and architectural character of the proposed roof extension is unacceptable and would not meet the highest standard of design required by policy D1, nor would it respect the character and proportions of the host listed building or the character, setting, context and form and scale of neighbouring buildings, contrary to policy D2. The introduction of a large glazed element would weaken the architectural language of the area and would be distinctly out of character. The proposed materiality would not support the existing character and would be detrimental to the architectural quality of the area.

10.5 Ms Hatton concludes that the proposed roof extension would cause harm to the character and appearance of the building and streetscene and that the change of use would cause harm to the significance of the building as a result of the building no longer being in a predominantly cultural use. It would also cause harm to the significance of the frieze by severing the relationship between the frieze and the use of the building. The proposed cinema would not make a contribution to the significance of the building or the cultural and leisure environment compared to the current facility or a new theatre.

10.6 I concur with Ms Hatton's analysis that the appeal proposals would cause harm to the significance of the designated heritage asset and that in line with paragraph 196 of the NPPF, this harm would be less than substantial. The level of harm would be towards the higher end of less than substantial.

10.7 The public benefits that are relied upon by the Appellant do not clearly or convincingly outweigh the harm. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF (para. 196) requires that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the optimum viable use of that asset. The proposed public benefits are not considered to outweigh the harm caused, and the proposed scheme is not considered to

represent the optimum viable use of the site. I consider that theatre use could quite likely be the optimum viable use, and that the Appellant has not satisfactorily demonstrated that it wouldn't be.

10.8 I concur with the analysis of my colleague Ms Hatton and agree that the appeal proposal conflicts with Local Plan policies D1 and D2.

Failure to provide maximum reasonable amount of replacement cultural or leisure facilities (Reason for Refusal 2)

10.9 The appeal site is suitable for continued use as a cultural / leisure facility. The proposals would result in a significant reduction in the quantum of cultural floorspace and its relocation away from the building's principal floors into the basement which itself is contrary to policy C3, but also results in harm to the significance of the listed building, contrary to policy D2. Insufficient evidence has been put forward to demonstrate that the building would not be suitable for continued cultural use.

10.10 The Odeon are vacating the site; however, a surrender premium of £5m suggests that Odeon considered the continued occupation of the property highly valuable such that it was only willing to vacate the property prematurely on receipt of a payment of £5m and to be excused the obligation to pay £10m in probable dilapidations. Mr Jones's evidence shows that the appeal proposals would result in a scheme in greater deficit than retention of a wholly cinema use.

10.11 Although a cinema would be re-provided, this would be drastically reduced in size, quality, and experience. The proposed cinema cannot be considered a comparable replacement; it would become a significantly reduced subsidiary use, and offer a diminished cultural facility and experience. The existing cultural facility would therefore be lost, contrary to policy C3.

10.12 There has been no proper and meaningful marketing process as required by policy C3, and I therefore do not consider that it can be reasonably concluded that the appeal scheme is the optimum viable use or that the site could not support an alternative cultural use.

10.13 Dr Wilmore who has provided evidence regarding the history of the building and its suitability for conversion back to theatre use, and an analysis of the Appellant's Charcoalblue report which puts forward one possible theatre layout option. I agree with his conclusions that a single option for a theatre design without any formal consultation or negotiation with a commercial operator seems to be an unproductive and misguided exercise which does not examine the proper market potential.

10.14 Further, in conjunction with the lack of marketing evidence, the Council received representations from the Theatres Trust demonstrating that there was

interest from a number of credible theatre operators with specific interest in the appeal site as this site represents one of the last opportunities to provide a large scale cultural venue in the West End.

10.15 In policy terms, theatre use or other cultural use on the principal floors would be the optimum viable use for this building given the contribution its cultural use makes towards its significance and the policy protection of cultural and leisure facilities. Considering the evidence provided by the Council's witnesses and the statutory consultee, the Theatres Trust, the Appellant has demonstrably failed to demonstrate to the Council's satisfaction that there is no longer a demand for the existing facility, or for alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough without causing the same level of harm to the significance of the building. The Appellant's own evidence suggests that the appeal proposals would result in a significant deficit, which would be greater than retaining the existing cinema facility. As such, I maintain that the proposals are contrary to both policies C3 and D2 of the Camden Local Plan.

Planning balance and conclusion

10.16 The merits of the appeal proposal are recognised, and the most significant of these are, in my view, enhancements to the public realm, improvements to the permeability and activation of the ground floor frontages, the contribution to the local economy from the new commercial uses, and the heritage improvements. Overall, I do not consider these benefits carry significant weight and I assign only low weight to all of these benefits. Although the proposals could bring some benefit in terms of employment and visitor spend, there are no additional community benefits or innovation which would represent a benefit of significant weight. The benefit is compliance with policy, but does not go further than this. The employment benefits offered would also be at the cost of the existing cultural facility, causing heritage harm. The public realm 'improvements' are very limited indeed and consist of minor widening of two pavements, as such this would carry limited weight as would the improvements to the permeability and activation of the ground floor frontages, which again also bring with them harm, particularly to the Frieze and the significance of the frontage through the change of use.

10.17 The heritage improvements, predominantly the repair and consolidation of the Bayes frieze and roundels; reinstatement of the original recessed poster boxes to Shaftesbury Avenue façade; reopening of the arched window over the main entrance; structural works to arrest and redress structural failings are recognised; however, such benefits could be delivered through other development proposals on this site. I therefore assign only moderate weight to this benefit.

10.18 Paragraph 10 of the NPPF concerns the 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 (i.e. planning benefits) that indicate that planning permission or listed building consent should be granted, as required under Section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 and section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

10.19 For the reasons above and as set out in the council's evidence taken as a whole, the inspector is respectfully invited to dismiss this appeal.

11 LIST OF SUGGESTED CONDITIONS

11.1 In the event that the inspector were mindful to allow the appeal, it is requested that the following additional conditions are applied to any subsequent decision. All planning conditions have been agreed by the appellant, and all listed building consent conditions have been agreed apart from condition 7 (historic fabric).

Planning conditions (reference 2017/7051/P)

1) Three years from the date of this permission

This development must be begun not later than three years from the date of this permission.

Reason: In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

2) Approved drawings

The development hereby permitted shall be carried out in accordance with the following approved plans:

2818-JW-001, 2818-JW-002, 2818-JW-011, 2818-JW-012, 2818-JW-013, 2818-JW-014, 2818-JW-015, 2818-JW-016, 2818-JW-017, 2818-JW-018, 2818-JW-019, 2818-JW-051, 2818-JW-052, 2818-JW-053-P02, 2818-JW-054-P02, 2818-JW-055-P02, 2818-JW-056-P02, 2818-JW-057-P02, 2818-JW-058, 2818-JW-059, 2818-JW-102-P02, 2818-JW-110-P02, 2818-JW-111-P02, 2818-JW-112-P02, 2818-JW-113-P02, 2818-JW-114-P02, 2818-JW-115-P02, 2818-JW-116-P02, 2818-JW-117-P02, 2818-JW-118-P02, 2818-JW-119-P02, 2818-JW-120-P02, 2818-JW-121-P02, 2818-JW-122-P02, 2818-JW-040, 2818-JW-041, 2818-JW-042, 2818-JW-091-P02, 2818-JW-092-P02, 2818-JW-140-P02, 2818-JW-141-P02, 2818-JW-142-P02, 2818-JW-147, 2818-JW-030-P02, 2818-JW-031-P02, 2818-JW-032, 2818-JW-033-P02, 2818-JW-034-P02, 2818-JW-081-P02, 2818-JW-082-P02, 2818-JW-083-P02, 2818-JW-084-P02, 2818-JW-130-P02, 2818-JW-131-P02, 2818-JW-132-P02, 2818-JW-133-P02, 2818-JW-134-P02, 2818-JW-143-P02, 2818-JW-144-P02, 2818-JW-135-P02, 2818-JW-136-P02, 2818-JW-137-P02, 2818-JW-138-P02, 2818-JW-145-P02, 2818-JW-146-P02, 2818-JW-200-P02, 2818-JW-201-P02, 2818-JW-202-P02, 2818-JW-203-P02, 2818-JW-204-P02, 2818-JW-205-P02.

Documents: Design & Access Statement dated March 2018, Air quality Assessment dated December 2017, Drainage and SuDS strategy report dated November 2017, SuDS proforma dated 13/04/2018, Overheating analysis dated April 2018, Energy statement dated April 2018 rev1, Sustainability statement dated December 2017, Statement of community engagement dated December

2017, Preliminary ecological appraisal dated November 2017, Planning statement dated December 2017, The need for renewal report dated December 2017, Heritage and Townscape Assessment dated December 2017, Archaeological desk based assessment dated 2017, Building condition report by Hallas & Co. dated August 2017, Transport statement dated December 2017, Framework travel plan dated December 2017, Daylight, sunlight & overshadowing report, Draft construction management plan dated December 2017, Draft delivery and service management plan dated December 2017, Construction method statement & Basement impact assessment dated December 2017, Operational management plan dated March 2018 and Planning noise report ref: 17468-R02-D dated 18 March 2020.

Reason: For the avoidance of doubt and in the interest of proper planning.

3) Tree protection measures

Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 (Open space) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017.

4) Biodiversity enhancements

Prior to commencement of development (other than demolition, site clearance and preparation), a plan showing details of biodiversity enhancements on the building (including bird and bat boxes) appropriate to the development's location, scale and design shall be submitted to and approved in writing by the local planning authority. The measures shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained.

Reason: In order to secure appropriate features to conserve and enhance wildlife habitats and biodiversity measures within the development, in accordance with the requirements of Policy A3 (Biodiversity) of the Camden Local Plan 2017 and Policy G6 (Biodiversity and access to nature) of the New London Plan.

5) Green roof feasibility

Prior to commencement of development (other than demolition, site clearance & preparation), a feasibility assessment with the aim of maximising the provision of green roofs should be submitted to the local planning authority and approved in writing. The building shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies G1, CC1, CC2, CC3, D1, D2 and A3 of the London Borough of Camden Local Plan 2017.

6) Roof terrace bar hours

The terrace located at roof level, shall only be used during the hours of 1000 to 2200 on Mondays to Saturdays and 1000 to 2100 on Sundays.

Reason: To ensure that the amenity of occupiers of residential properties in the area is not adversely affected by noise and disturbance in accordance with the requirements of policy A1 (Managing the impact of development) of the Camden Local Plan 2017.

7) Ground floor bar

The bar and restaurant located at ground floor level shall only be open to members of the public (not including hotel guests) between the hours of 0900 – 00:00 Monday to Sunday.

Reason: To ensure that the amenity of occupiers of residential properties in the area is not adversely affected by noise and disturbance in accordance with the requirements of policy A1 (Managing the impact of development) of the Camden Local Plan 2017.

8) Cinema bar

The cinema bar located at ground floor level shall only be open to members of the public between the hours of 0900 – 00:00 Monday to Sunday.

Reason: To ensure that the amenity of occupiers of residential properties in the area is not adversely affected by noise and disturbance in accordance with the requirements of policy A1 (Managing the impact of development) of the Camden Local Plan 2017.

9) Audible music

Prior to commencement of the proposal, details shall be submitted to the Local Planning Authority for approval to demonstrate the level of entertainment noise emitted from the application building i.e. amplified music, but excluding plant noise, shall be inaudible at the nearest noise sensitive premises. To demonstrate compliance, music noise levels in the 63Hz and 125Hz octave centre frequency bands (LZeq) should be controlled so as not to exceed (in habitable rooms) 47dB and 41dB (LZeq), respectively.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 (Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.

10) Refuse and recycling

Prior to first occupation of each of the relevant uses in each building, details of waste and recycling storage for the development shall be submitted to and approved in writing by the local planning authority. The waste and recycling storage shall be provided in accordance with the approved details prior to the commencement of the uses hereby permitted, and shall thereafter be retained solely for its designated use.

Reason: To safeguard the amenities of the future occupiers and adjoining neighbours in accordance with the requirements of policy CC5 (Waste) of the Camden Local Plan 2017.

11) Fire Statement

No above ground new development for each of the relevant uses shall commence until a Fire Statement for the relevant uses has been submitted to and approved in writing by the Local Planning Authority. The Fire Statement shall be produced by an independent third party suitably qualified assessor which shall detail the building's construction, methods, products and materials used; the means of escape for all building users including those who are disabled or require level access together with the associated management plan; access for fire service personnel and equipment; ongoing maintenance and monitoring and how provision will be made within the site to enable fire appliances to gain access to the building. The relevant uses of the development shall be carried out in accordance with the approved details.

Reason: In order to provide a safe and secure development in accordance with policy D12 (Fire safety) of the New London Plan.

12) Non-road mobile machinery

All non-Road mobile Machinery (any mobile machine, item of transportable industrial equipment, or vehicle – with or without bodywork) of net power between 37kW and 560kW used on the site for the entirety of the demolition and construction phase of the development hereby approved shall be required to meet Stage IIIA of EU Directive 97/68/EC. The site shall be registered on the NRMM register for the demolition and construction phase of the development.

Reason: To safeguard the amenities of the adjoining occupiers, the area generally and contribution of developments to the air quality of the borough in accordance with the requirements policies A1 (Managing the impact of development) and CC4 (Air quality) of the Camden Local Plan.

13) Plant and equipment

The external noise level emitted from plant, machinery or equipment at the development with suggested mitigation measures hereby approved shall be lower than the lowest existing background noise level by at least 10dBA, or by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 (Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.

14) Noise Levels between uses

The noise level in rooms at the development hereby approved shall meet the current noise standard specified in Appendix H of BS 8233:2014 for internal rooms and external amenity areas.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by noise and vibration in accordance with the requirements of policies A1 (Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.

15) Anti-vibration measures

Prior to installation of machinery, plant or equipment and ducting at the development each item shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1(Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017

16) Mechanical Ventilation

Prior to commencement of above-ground development, full details of the mechanical ventilation system including air inlet locations shall be submitted to and approved by the local planning authority in writing. Air inlet locations should be located away from busy roads and any boiler stack and kitchen extract and as close to roof level as possible, to protect internal air quality. The development shall thereafter be constructed and maintained in accordance with the approved details.

Reason: To protect the amenity of residents in accordance with Policy CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

17) Mechanical Ventilation and NO2 Filtration

Prior to occupation of any use, evidence that an appropriate NO2 filtration system on the mechanical ventilation intake has been installed and a detailed mechanism to secure maintenance of this system should be submitted to the Local Planning Authority and approved in writing.

Reason: To protect the amenity of residents in accordance with Policy CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

18) Construction related impacts – Monitoring

Air quality monitoring shall be implemented on site. No development shall take place until

a. prior to installing monitors, full details of the air quality monitors have been submitted to and approved by the local planning authority in writing. Such details shall include the location, number and specification of the monitors, including evidence of the fact that they have been installed in line with guidance outlined in the GLA's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance;

b. prior to commencement, evidence has been submitted demonstrating that the monitors have been in place for at least 3 months prior to the proposed implementation date.

The monitors shall be retained and maintained on site for the duration of the

development in accordance with the details thus approved.

Reason: To safeguard the amenity of adjoining premises and the area generally in accordance with the requirements of policies A1 (Managing the impact of development) and CC4 (Air quality) of the London Borough of Camden Local Plan Policies.

19) Air Source Heat Pump

Prior to commencement of above ground works, details, drawings and data sheets showing the location, Seasonal Performance Factor of at least 2.5 and Be Green stage carbon saving of the air source heat pumps and associated equipment to be installed on the building, shall have been submitted to and approved by the Local Planning Authority in writing. The measures shall include the installation of a meter, details including estimated costs to occupants and commitment to monitor performance of the system post construction. A site-specific lifetime maintenance schedule for each system, including safe access arrangements, shall be provided. The equipment shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of policy CC1 (Climate change mitigation) of the London Borough of Camden Local plan Policies

20) PV panels

Prior to occupation of any use, detailed drawings and data sheets showing the location and extent of photovoltaic cells and associated equipment to be installed on the building shall have been submitted to and approved by the Local Planning Authority in writing. The measures shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. A site-specific lifetime maintenance schedule for each system, including safe roof access arrangements, shall be provided. The cells shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of Policy G1 (Delivery and location of growth) and CC1 (Climate change mitigation) of the London Borough of Camden Local Plan 2017.

21) Water supply

Prior to the commencement of above ground works, an impact study of the existing water supply infrastructure shall be submitted to and approved in writing

by the Local Planning Authority in consultation with Thames Water. The study shall identify any new additional capacity required in the system and suitable connection point.

Reason: To ensure the water supply infrastructure has sufficient capacity to cope with the additional demand in accordance with the requirements of Policy CC3 (Water and flooding) of the Camden Local Plan 2017.

22) Piling method statement

Prior to commencement of any impact piling, a piling method statement shall be submitted to and approved in writing by the local planning authority. The Method Statement shall be prepared in consultation with Thames Water or the relevant statutory undertaker, and shall detail the depth and type of piling to be undertaken and the methodology by which such piling will be carried out including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: To safeguard existing below ground public utility infrastructure and controlled waters in accordance with the requirements of Policy CC3 (Water and flooding) of the London Borough of Camden Local Plan 2017.

23) Basement Engineer

The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy A5 (Basements) of the Camden Local Plan.

24) Cycle parking

Prior to occupation of any use, the following cycle parking (as shown on drawing no. 2818-JW-111 rev P02) shall be provided in its entirety:

- a) Secure and covered parking for 12 long stay cycle parking spaces
- b) Secure and covered parking for at least 1 long stay adapted cycle parking space

All such facilities shall thereafter be permanently maintained and retained.

Reason: To ensure that the scheme makes adequate provision for cycle users in accordance with policies T1 (Prioritising walking, cycling and public transport) and T3 (Transport infrastructure) of the Camden Local Plan 2017.

25) Access – Hotel Rooms

Prior to the commencement of use of the hotel, detailed plans of the 9 (10%) fully wheelchair accessible rooms shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that the internal layout of the building makes sufficient provision for the needs of people with disabilities in accordance with the requirements of policy C6 (Access for all) of the Camden Local Plan 2017.

26) Cinema use

The proposed cinema (Class D2) hereby approved shall be provided prior to commencement of occupation of the development and retained in perpetuity thereafter.

Reason: To ensure that the future occupation of the building provides required culture and leisure facilities space in accordance with policy C3 of the London Borough of Camden Local Plan 2017.

Listed building consent conditions (2018/0037/L)

1) Three years from the date of this permission

This development must be begun not later than three years from the date of this permission.

Reason: In order to comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2) Approved drawings

The development hereby permitted shall be carried out in accordance with the following approved plans:

2818-JW-001, 2818-JW-002, 2818-JW-011, 2818-JW-012, 2818-JW-013, 2818-

JW-014, 2818-JW-015, 2818-JW-016, 2818-JW-017, 2818-JW-018, 2818-JW-019, 2818-JW-051, 2818-JW-052, 2818-JW-053-P02, 2818-JW-054-P02, 2818-JW-055-P02, 2818-JW-056-P02, 2818-JW-057-P02, 2818-JW-058, 2818-JW-059, 2818-JW-102-P02, 2818-JW-110-P02, 2818-JW-111-P02, 2818-JW-112-P02, 2818-JW-113-P02, 2818-JW-114-P02, 2818-JW-115-P02, 2818-JW-116-P02, 2818-JW-117-P02, 2818-JW-118-P02, 2818-JW-119-P02, 2818-JW-120-P02, 2818-JW-121-P02, 2818-JW-122-P02, 2818-JW-040, 2818-JW-041, 2818-JW-042, 2818-JW-091-P02, 2818-JW-092-P02, 2818-JW-140-P02, 2818-JW-141-P02, 2818-JW-142-P02, 2818-JW-147, 2818-JW-030-P02, 2818-JW-031-P02, 2818-JW-032, 2818-JW-033-P02, 2818-JW-034-P02, 2818-JW-081-P02, 2818-JW-082-P02, 2818-JW-083-P02, 2818-JW-084-P02, 2818-JW-130-P02, 2818-JW-131-P02, 2818-JW-132-P02, 2818-JW-133-P02, 2818-JW-134-P02, 2818-JW-143-P02, 2818-JW-144-P02, 2818-JW-135-P02, 2818-JW-136-P02, 2818-JW-137-P02, 2818-JW-138-P02, 2818-JW-145-P02, 2818-JW-146-P02, 2818-JW-200-P02, 2818-JW-201-P02, 2818-JW-202-P02, 2818-JW-203-P02, 2818-JW-204-P02, 2818-JW-205-P02.

Design & Access Statement dated March 2018, Air quality Assessment dated December 2017, Drainage and SuDS strategy report dated November 2017, SuDS proforma dated 13/04/2018, Overheating analysis dated April 2018, Energy statement dated April 2018 rev1, Sustainability statement dated December 2017, Statement of community engagement dated December 2017, Preliminary ecological appraisal dated November 2017, Planning statement dated December 2017, The need for renewal report dated December 2017, Heritage and Townscape Assessment dated December 2017, Archaeological desk based assessment dated 2017, Building condition report by Hallas & Co. dated August 2017, Transport statement dated December 2017, Framework travel plan dated December 2017, Daylight, sunlight & overshadowing report, Draft construction management plan dated December 2017, Draft delivery and service management plan dated December 2017, Construction method statement & Basement impact assessment dated December 2017, Operational management plan dated March 2018, and Planning noise report ref: 17468-R02-D dated 18 March 2020.

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy D2 (Heritage) of the Camden Local Plan 2017.

3) Detailed drawings/samples

Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun:

- a) Plan, elevation and section drawings, including jambs, head and cill, of all external windows and doors at a scale of 1:10;

- b) Detailed drawings of roof extension showing joins between glazing panels and with historic fabric at a scale of 1:10;
- c) Samples and manufacturer's details of new facing materials including proposed glazing (including fritted detailing) shall be provided on site.
- d) Details of the external lighting strategy, including detailed drawings of light fittings, location and luminance levels.
- e) Detailed drawings of proposed signage strategy
- f) Detailed drawings and method statement of repair works to decorative frieze, external elevations and brickwork repairs.
- g) Detailed drawings of new arched window to front elevation.
- h) Detailed drawings of the internal projection of the original auditorium outline.

The relevant part of the works shall then be carried in accordance with the approved details

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy D2 of the Camden Local Plan 2017.

4) Matching materials

All new work and work of making good shall be carried out to match the existing adjacent work as closely as possible in materials and detailed execution.

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy D2 (Heritage) of the Camden Local Plan 2017.

5) Written scheme of historic building investigation

No demolition shall take place until a written scheme of historic building investigation (WSI) has been submitted to and approved by the local planning authority in writing. For buildings that are included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and

- a. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works

b. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: Important archaeological remains may exist on this site. Accordingly the Local planning authority wishes to secure the provision of archaeological investigation and the subsequent recording of the remains prior to development in accordance with the requirements of policy D2 (Heritage) of the London Borough of Camden Local Plan 2017.

6) External fixtures

No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes shall be fixed or installed on the external face of the buildings, without the prior approval in writing of the Council.

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy D2 (Heritage) of the Camden Local Plan 2017.

7) Historic Fabric

A full investigative survey of the existing structure shall be carried out and a report of findings, including the identification of and methodology for any significant features to be repaired and incorporated into the proposals, shall be submitted to and approved by the local planning authority prior to any new works of construction commencing. The works shall thereafter proceed in strict accordance with the methodology as has been approved.

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of Policy D2 of the Camden Local Plan 2017.

12 LIST OF APPENDICES

Appendix A – Statement from Neil McDonald, LB Camden.

Appendix B – Copies of emails received from interested theatre operators and Theatres Trust.

Appendix C – Pages from Camden Authority Monitoring Report 2017 – 2018.

Appendix A – Statement from Neil McDonald, LB Camden

APPEAL SITE

135-149 Shaftesbury Avenue, London, WC2H 8AH

APPELLANT

Capitalstart Limited

SUBJECT OF APPEAL

Appeal against London Borough of Camden's refusal of Planning Permission and Listed Building Consent 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

Statement of Neil McDonald, Team Manager, Development Management, LB Camden

02 Nov 2020

Dear Sir

I am the manager for the South Area of the Borough of Camden for matters relating to Development Management and have held this post since prior to the submission of the planning applications at 135-149 Shaftesbury Avenue, 2017/7051/P and 2018/0037/L. I had previously been involved in some of the pre-application discussions which took place and subsequently continued my involvement in an overseeing capacity throughout the assessment of the application.

It emerged during a general catchup meeting with the Theatres Trust, which I attended with the then Director of Regeneration and Planning early in 2019, that the Theatre's Trust were concerned about the proposals to redevelop the Saville Theatre for a hotel led scheme as they felt that it was a missed opportunity, there being unexplored demand for it's reuse as a theatre on the basis of a number of enquiries they had received from theatre operators looking for suitable opportunities in the West End. They mentioned that they would like to put these operators in touch with me to discuss how best they should pursue their interest in relation to the former Saville Theatre.

Shortly afterwards I received telephone enquiries from three separate theatre operators. My conversations with each of them confirmed that they were interested in the building particularly due to its West End location and being the only potentially available purpose-built venue in the Central London area benefiting from a fly tower. They wanted my advice on the prospects of the space being made available by the owner either on the open market or through some alternative deal being made between the owner and prospective theatre manager. They wanted to know how the current planning application might affect the likelihood of the premises coming forward.

I explained the application process and that it was still being assessed by Camden and that evidence of demand for a more sympathetic use such as a theatre could be a material consideration. However I also explained that we could not force the owner to sell or market his property or enter into constructive dialogue with prospective development partners. I recall that one or two of the operators had mentioned having approached the owner already but little interest had been shown by the owner in constructive discussions. I suggested the operators may want to put their concern about the loss of this premises to potential theatre use in writing to be submitted as representations on the application, however they each felt that such a move would be likely to compromise their position with the owner in terms of further negotiations which they each felt would be worthwhile trying to pursue.

I also mentioned the applicant's submissions on the condition of the building and considerable financial expense they believed would be incurred securing the building in any form of ongoing beneficial use. None of the theatre operators appeared to be

unduly concerned by the type of works which the applicants claimed would be needed although they said they would peruse the supporting documents for the application which were available online.

I trust the above information is useful to the Inquiry.

Yours faithfully

Neil McDonald
Team Manager Development Management

Appendix B – Copies of emails received from interested theatre operators and Theatres Trust

Hazelton, Laura

From: McDonald, Neil
Sent: 20 March 2019 16:22
To: Hazelton, Laura
Subject: FW: Saville Theatre, 135-149 Shaftesbury Ave, 2017/7051/P & 2018/0037/L

Follow Up Flag: Follow up
Flag Status: Completed

For info

Neil McDonald
Team Manager (South), Development Management

Telephone: 020 7974 2061

From: [REDACTED]
Sent: 04 March 2019 16:31
To: McDonald, Neil <Neil.McDonald@camden.gov.uk>
Subject: Saville Theatre, 135-149 Shaftesbury Ave, 2017/7051/P & 2018/0037/L

Afternoon Neil,

I write in reference to the current planning application for the Grade II Saville Theatre on Shaftesbury Ave.

I have only just been made aware of this application, and at this stage do not wish to make a formal or public comment, however I would very much like to discuss it with you.

From a brief review of the publically available information, I believe that it would be possible to restore this building with its primary function as a 1200+ seat live performance theatre, and operate it as a viable business.

[REDACTED] developed and delivered schemes for renovating similar scale venues and constructing new build theatres of similar sizes. One such scheme involved returning [REDACTED] to theatre use after it was repurposed in a similar way [REDACTED]. I expect the Saville Theatre is in a similar condition given that it has had similar works done [REDACTED].

Due to its West End location and scale, we believe it would be feasible to create a viable business that utilises the existing shell of the Saville theatre, likely retaining or re-locating internal listed features where these are still present and returning it to a single main auditorium for live entertainment.

Alternatively, it may be viable to partner with the current freeholder to create a smaller 800 seat theatre within the space, reserving some upper floors for use as a hotel/restaurant/spa as per the current proposals.

I'd be delighted if we could discuss a little further by phone – my mobile number is below if you would like to give me a call.

Kind regards,

[REDACTED]

To: McDonald, Neil <Neil.McDonald@camden.gov.uk>
Subject: Saville Theatre - Telephone call with Edward Snape

Dear Neil,

I hope this finds you well and you do not mind me getting in touch. Jon Morgan from Theatre Trust kindly gave me your details.

I would like to arrange a telephone call for you to speak with my Director at [REDACTED] to discuss the planning application for Saville Theatre.

[REDACTED] is available to speak later this week, or the beginning of next, dependent on how urgent you feel this call is.

Let me know what days suit you best and I will liaise with [REDACTED]

All the best,

[REDACTED]

Production Administrator



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Hazelton, Laura

From: McDonald, Neil
Sent: 22 March 2019 16:25
To: Hazelton, Laura
Subject: FW: Odeon Shaftesbury Avenue (former Saville Theatre)

Laura, another one

Neil McDonald
Team Manager (South), Development Management

Telephone: 020 7974 2061

From: [REDACTED]
Sent: 22 March 2019 10:07
To: McDonald, Neil <Neil.McDonald@camden.gov.uk>
Subject: Odeon Shaftesbury Avenue (former Saville Theatre)

Neil – I have been given your email details by The Theatres Trust and I understand that you are dealing with the current planning application at this property.

I wondered if we might have a quick word (it would not take more than 5/10 minutes) – is there a good time for you?

Regards

Andrew

[REDACTED]
Business Affairs Director

[REDACTED]

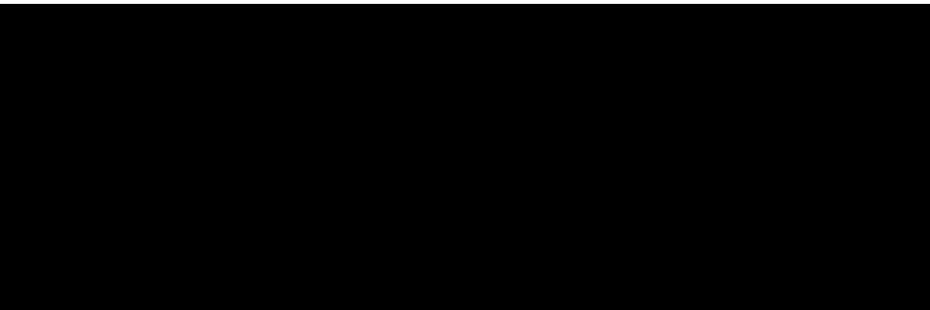
[REDACTED]

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From: Jon Morgan <[REDACTED]>
Sent: 06 February 2019 19:09
To: Joyce, David <[REDACTED]>; O'Donnell, Brian
<[REDACTED]>; McDonald, Neil <[REDACTED]>
Cc: Tom Clarke <[REDACTED]>; Claire Appleby
<[REDACTED]>
Subject: RE: Theatres Trust Introduction

Dear Brian, David and Neil

It was great to meet you on Monday to discuss our role within planning and how we might support your theatre-related casework.



Thanks for the updates on the Old Diorama, Central School of Speech and Drama and the Odeon Shaftesbury Avenue. On the latter I checked with colleagues back at the office and we believe, confidentially, [REDACTED] did discuss their interest with Bethany Cullen and I understand they plan to contact you directly to reconfirm their potential interest. The sticking point at present is that apparently the owner is asking for £45m which is well in excess of the building's value as a theatre. We also have spoken to at least two other reputable theatre managements who are interested and could nudge them if that is helpful. All of which demonstrates that the building does have potential as a theatre and live performance venue. We were wondering, is the independent consultants' report on the conservation deficit publicly available and / or could we have sight of this as we would like to understand the extent and value of works required should it be returned to live performance use.

Finally, do please keep us abreast of any developments or initiatives around the night time economy as part of the West End Partnership as we are keen to contribute to this agenda.

Best wishes

Jon

Jon Morgan
Director

Theatres Trust
22 Charing Cross Road, London WC2H 0QL

T [REDACTED]
E [REDACTED]

Appendix C – Pages from Camden Authority Monitoring Report 2017 – 2018.

London Borough of Camden

Regeneration and Planning Authority Monitoring Report 2017/18



Image: King's Cross Central development March 2018.

Development Management statistics

In 2017/18 Camden approved 76% of all planning applications. Major developments comprised less than 1% of all applications.

Table 1. Planning decisions – all applications 2007/08-2017/18

Period	Decisions	% of total	Granted	% granted
2007/08	3,357	100%	2,784	83%
2008/09	2,884	100%	2,467	86%
2009/10	2,644	100%	2,278	86%
2010/11	3,320	100%	2,880	87%
2011/12	3,372	100%	2,958	88%
2012/13	3,409	100%	2,843	83%
2013/14	4,019	100%	3,152	78%
2014/15	4,399	100%	3,333	76%
2015/16	4,466	100%	3,288	74%
2016/17	4,544	100%	3,390	75%
2017/18	3,804	100%	2,903	76%

Source: Development Management, RPT5, LB Camden

Table 2. Planning decisions – major applications 2007/08-2017/18

Period	Decisions	% of total	Granted	% granted
2007/08	30	0.90%	15	50%
2008/09	28	1.00%	19	68%
2009/10	45	1.70%	32	71%
2010/11	68	2.00%	54	79%
2011/12	42	1.20%	32	76%
2012/13	55	1.61%	42	76%
2013/14	59	1.47%	35	59%
2014/15	70	1.59%	61	87%
2015/16	41	0.92%	37	90%
2016/17	49	1.08%	41	84%
2016/17	33	0.87%	30	91%

Source: Development Management, RPT5, LB Camden