

## Proof of Evidence:

### Tom Clarke MRTPI on behalf of Theatres Trust

Appeal References: APP/X5210/W/19/3243781 & APP/X5210/Y/19/3243782 (Linked Case)

Site: Odeon Cinemas, 135-149 Shaftesbury Avenue, LONDON, WC2H 8AH

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

Appellant: Capitalstart Limited

Planning Authority: London Borough of Camden

Application Reference: 2017/7051/P & 2018/0037/L

Our Reference: TC/2076

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The National Advisory Public Body for Theatres

The Theatres Trust Charitable Fund co-operates with Theatres Trust, has the same Trustees and is registered as a charity under number 274697

## CONTENTS

1. Qualifications & experience	Page 3
2. About Theatres Trust	Pages 3 – 4
3. Introduction to the development	Pages 4 – 5
4. Scope of evidence	Pages 5 – 7
5. Policy summary	Pages 7 – 15
6. Analysis of the appeal scheme and the effect of the proposal on the provision of cultural and leisure facilities	Pages 15 – 23
7. Statement on the impact of Covid-19 on this evidence	Pages 23 – 24
8. Conclusion and planning balance	Pages 24 – 26

## 1. Qualifications and experience

- 1.1 My name is Tom Clarke. My role is 'National Planning Adviser' for Theatres Trust, whose address is 22 Charing Cross Road, London, WC2H 0QL. The Theatres Trust is the national advisory public body for theatres and is a statutory consultee within the planning system as set out within The Town and Country Planning (Development Management Procedure) (England) Order 2015. My evidence is given on behalf of the Trust.
- 1.2 I hold a Bachelor of Arts (Hons) in Politics (University of Essex) and a Masters in Urban and Regional Planning (University of Westminster). I have been a member of the Royal Town Planning Institute since 2018.
- 1.3 Prior to joining Theatres Trust, I worked as a Planning Officer within a local authority (London Borough of Tower Hamlets) where I specialised in town centre, commercial, leisure, community and cultural development. I have also worked in a voluntary capacity with community groups seeking to prevent pubs which they value from being lost to redevelopment. I have over seven years' experience of working in a town and country planning role.
- 1.4 The evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

## 2. About Theatres Trust

- 2.1 Theatres Trust is the national advisory public body for theatres. It was established through the Theatres Trust Act 1976 *'to promote the better protection of theatres'* and provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on planning applications which include *'development involving any land on which there is a theatre'*. The Theatres Trust Act 1976 defines "theatre" as *"any building or part of a building constructed wholly or mainly for the public performance of plays"*.
- 2.2 In addition to responding to planning applications (including listed building consents, advertisement consents and any other application type for which the Trust is asked or proactively responds to) it provides advice and pre-application guidance to applicants, local authorities and other interested parties. It contributes to local, regional and national policy consultations, securing policies which promote and protect theatres and cultural uses. The Trust has experience of contributing to Appeals, Inquiries and Examinations in Public. It should be noted this is the first Inquiry the Trust has been involved in for a number of years, and it is believed to be the first time the Trust has been a Rule 6 party denoting the significance of belief this site should be retained for cultural use and the strength of evidence the site can be viable and is needed as a theatre.
- 2.3 As a statutory consultee and expert in planning matters with regards to theatres and

theatre buildings, considerable weight should be afforded to the Trust's advice and objections in the determination of relevant applications, including this appeal. This includes my advice and evidence specifically as an expert witness. The importance of the views of statutory consultees and their particular expertise, together with the legal requirements upon decision makers should they depart from such expert views has been recently emphasised by the High Court in Visao Ltd v The Secretary of State for Housing, Communities and Local Government [2019] EWHC 276 (Admin). Additionally, the High Court in Shadwell Estates Ltd. v Breckland DC [2013] EWHC 12 (Admin) held that "a decision-maker should give the views of statutory consultees...*"great"* or *"considerable"* weight. A departure from those views requires *"cogent and compelling reasons"*.

### **3. Introduction to the development**

- 3.1 This Inquiry concerns an appeal made by Capitalstart Ltd. against the refusal of planning permission and listed building consent by London Borough of Camden for the following development:

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

- 3.2 The appeal site is located at 135-149 Shaftesbury Avenue, London, WC2H 8AH. It is currently known as the Odeon Covent Garden. Its statutory listing refers to the site as the 'Former Saville Theatre'.

- 3.3 As highlighted within our Statement of Case the Trust was not consulted or directly notified by the Council. Following being made aware of the application in October 2018 a representation objecting to the proposed development was submitted at the earliest opportunity (15<sup>th</sup> October 2018). A further letter was sent to the Council on 15<sup>th</sup> March 2019.

- 3.4 The applications were refused planning permission and listed building consent by the Council on 5<sup>th</sup> July 2019. Amongst the main reasons for refusal were:

"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."; and

"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.”

The second reason for refusal in particular corresponded with the Trust’s main reason for objection and supports why robustly testing the need, demand and viability of this site for continued cultural use at its current scale is essential. The first reason for refusal, namely the harm to the significance of the host building as a heritage asset, was also cited by the Trust as an objection and is to some extent interlinked with the second reason for refusal.

- 3.5 The Inspector has indicated these will form two of the main five issues of the Inquiry.
- 3.6 The main points of the Trust’s original objection and subsequent further submission remain, as outlined within its Statement of Case. These are further considered within this Proof of Evidence, with reference to the National Planning Policy Framework (NPPF) (2019), the London Plan (2016 and Intend to Publish version, 2019), the Culture and Night-Time Economy Supplementary Planning Guidance (2017) and the Camden Local Plan (2017).

#### **4. Scope of evidence**

- 4.1 This proof of evidence covers matters pertinent to reasons for refusal 1 and 2 of application references 2017/7051/P & 2018/0037/L, and in turn the corresponding main issues identified by the Inspector following an initial case management meeting between the main parties and the Inspector on 28<sup>th</sup> February 2020 ahead of the original date of the Inquiry (event postponed indefinitely due to Covid-19). These main issues remain in place following a fresh case management conference which took place between the main parties and the Inspector on 30<sup>th</sup> September 2020 ahead of a rearranged Inquiry commencing digitally on 1<sup>st</sup> December 2020.
- 4.2 The main issues for the Inquiry identified in the meeting of 28<sup>th</sup> February 2020 are set out below:

For both appeals:

- a. the effect of the proposal on the significance of the host listed building and the nearby Seven Dials and Denmark Street Conservation Areas (both appeals)

For Appeal A (3243781 / 2017/7051/P) only:

- b. the effect of the proposal on the provision of cultural and leisure facilities
- c. the effect of the proposal on the occupiers of neighbouring properties and the users of The Phoenix Garden, with particular regard to noise and disturbance, light, privacy and outlook
- d. the effect of the proposal on biodiversity within The Phoenix Garden

- e. whether the proposal would make adequate provision to address effects on the local highway network, energy efficiency and climate change, and local employment, training and skills
- 4.3 Following the later meeting of 30<sup>th</sup> September 2020 it was confirmed discussions had been held around noise and vibration and a Section 106 agreement was being progressed covering reasons for refusal 4-14 of Appeal A. These matters almost entirely fall outside of the focus of my evidence.
- 4.4 The primary focus of my evidence relates to reason for refusal 2 (main issue b.) covering land use and specifically the need for and viability of cultural use. In particular this considers need and demand for theatre. This is interlinked with design and heritage implications within reason 1 (main issue a).
- 4.5 My evidence is not looking at the need for or viability of hotel use or any other non-cultural use at the site, or the suitability of the site for hotel and other non-cultural uses. I acknowledge that in principle policy can support short-stay accommodation and other town centre uses at this location by virtue of the site's location within the Central Activities Zone (CAZ) and specifically London's West End. I also acknowledge that London Plan policy sets out targets for short-stay accommodation, although these have been subject to challenge. Neither does my evidence deal with other main issues or minor issues unrelated directly to issues a. or b. Accordingly, my evidence does not provide an overall planning balance although clearly the extent to which such a proposal for hotel use and other non-cultural uses can be supported must be balanced against the loss of cultural use for which strong and up-to-date policies are in place providing protection.
- 4.6 In summary, this proof of evidence will address the following points:
- That contrary to the Appellant's assertion the proposal will result in significant reduction of the building's cultural function contrary to local, London and national policy.
  - That there has been insufficient effort or evidence to secure an alternative cultural use at the current scale or demonstrate that alternative cultural use cannot be viable; in particular theatre use for which further exploration is merited by virtue of the building's historic function, typology, character and volume.
  - Moreover, there is significant evidence of need and demand for the appeal site as a theatre from established theatre operators and producers, reinforced by wider audience data.
  - That this site represents the last opportunity to deliver a significant new theatre within London's West End, thereby better contributing to wider planning, economic, social and placemaking objectives than the development proposed within this appeal.

- That alteration and design of the nature proposed would undermine the character and significance of the building as a statutory Grade II listed heritage asset. Following a site visit on 16<sup>th</sup> March 2020 and based on knowledge of other conversions to cinema including those utilised by the same operator we also believe there to be greater historic fabric and plan form in place than was initially believed at the time of determination of the two applications.
- That there is insufficient public benefit arising from the proposal which would mitigate and overcome the harm to the building's appearance and character and the loss of cultural provision.

4.7 Furthermore, this evidence will challenge assertions made by the appellant that Theatres Trust does not consider to be correct and highlights where the information pertinent to the Trust's case which has not been made available.

4.8 This evidence will also cover matters which are material to the determination of these Appeals but which have arisen following the original Case Management Conference of 28<sup>th</sup> February 2020. This will include legislative changes such as the introduction of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 as well as a reflection on the impacts of Covid-19.

## 5. Policy Summary

5.1 The Trust's Statement of Case sets out in detail the policies which I consider most pertinent to these applications reflecting the points outlined above within part 4. I refer to Government guidance set out within the NPPF (2019), the adopted Camden Local Plan (2017) relevant policies in the adopted and 'Intend to Publish' versions of the London Plan.

5.2 The scope of my evidence for this Inquiry is in relation to theatre and cultural use at the application site and the heritage implications of the proposed development thereof. I consider there is a large degree of consistency between the policies cited at local, national and London level. I also consider those policies to be up-to-date and carry full material weight.

### Camden Local Plan (2017)

5.3 At a local (borough) level the Camden Local Plan (2017) is an up to date expression of local policy. It is consistent with the NPPF and both the existing and 'Intend to Publish' versions of the London Plan, containing strong policy protecting cultural and leisure facilities as would be expected given the borough's strong reputation and inextricable links with the arts and that it contains a significant portion of what is considered to be the West End. This includes a number of theatres which form part of the 'Theatreland' cluster. The Local Plan was adopted on 3<sup>rd</sup> July 2017.

### Policy C3

- 5.4 This is the most relevant policy to my case within the Local Plan; it should be given full weight given its individual consistency with the NPPF (2019) and both existing and 'Intend to Publish' versions of the London Plan. Policy C3 states:

*"The Council will seek to protect cultural and leisure facilities and manage the impact of adjoining uses where this is likely to impact their continued operation.*

*Where there is a proposal involving the loss of a cultural or leisure facility, it must be demonstrated to the Council's satisfaction there is no longer a demand. When assessing such planning applications, we will take the following into account:*

- 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.*

*Exceptionally it may be practicable for a cultural or leisure facility to be re-provided on-site through redevelopment, or elsewhere in the Borough. The Council will take the following into account when determining the suitability of proposals:*

- 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. 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."*

- 5.5 Policy C3 provides a clear and in-depth basis by which to judge proposals impacting on cultural uses. Where there would be a loss of a cultural facility the need to demonstrate there is no longer a need or demand for the facility is made front and centre, along with a need to assess whether alternative cultural use could be supported. This fundamental policy criteria is applicable in this instance, as by all objective measures the proposal is resulting in the loss of a facility. While I accept there is some degree of replacement cinema use proposed as part of the development, it is clear this is subservient and ancillary to the primary use of the site and as such the site would lose its cultural function. Even were it to be agreed the proposed replacement cinema constitutes re-provision, Policy C3 in any case covers this scenario and I consider the proposal to also fail the tests of that part of the policy.



- 5.6 Supporting paragraphs 4.49 – 4.64 provide further guidance as to how to apply Policy C3. Pertinently paragraph 4.52 recognises some of Camden’s cultural and leisure facilities “*to be at risk from demolition and change of use due to high values generated by alternative uses*”. Further, paragraph 4.55 states, “*This policy aims to ensure we give particular attention to the value provided by cultural and leisure facilities in planning decisions. It also seeks to address their vulnerability from higher value land uses.*”
- 5.7 To underline the significant weight afforded to protecting and retaining cultural facilities paragraph 4.56 states, “*The Council will seek to retain cultural and leisure facilities. In assessing planning applications, we will consider the effects of the proposal on both the local area and the wider borough and whether the loss of a use would be detrimental to the range of leisure and cultural facilities, including specific cultural and leisure activities (e.g. live music), where appropriate. We will also consider whether the scheme would be detrimental to health and well-being through the loss of facilities which provide meeting spaces for the community. We will take into account any planned new facilities which may address a shortfall in provision.*”
- 5.8 A more general point, although one which is relevant to this case given the application site being statutorily Grade II listed and which relates to the overlap between main issues a. and b. is paragraph 4.57. This states, “*Cultural and leisure facilities can contribute to townscape value and the special character and appearance of conservation areas and may be a heritage asset in their own right. The civic importance of buildings, such as theatres and music venues, is often reflected by the quality of their architectural design and internal fabric and fittings.*” Although in this instance I accept as set out within Theatres Trust’s Statement of Case that this site has lost much of its internal features of significance (although in fact remaining fabric may be greater than originally anticipated following inspection of the appeal site), in townscape terms the building is of theatrical character and form and moreover it contains a decorative frieze of great significance. The shell of the existing building and overall volume of the original theatre including that of its fly tower are substantially intact. Therefore some weight must also be placed on the extent to which the proposal and its design is consistent with the building’s overall character and significance.
- 5.9 Coming back to my acceptance within paragraph 4.5 of this evidence which accepts the proposed land use can be acceptable in principle at this site paragraph 4.57 supporting Policy C3 goes on to note “*Cultural and leisure facilities support consumer expenditure, tourism and business investment in the Borough and contribute to the vibrancy and success of town centres and the night-time economy*”. Therefore additional to the policy weight and balance which needs to be given the protection of cultural use (either existing cinema or alternative such as theatre) and in turn an assessment of the need and viability of cultural use, it is also clear a wider placemaking judgement needs to be made as to the use which would better contribute to the success of the West End, the wider CAZ and indeed London as a destination.
- 5.10 For the avoidance of doubt supporting paragraph 4.57 also states the types of facilities “*considered to be important in helping to define Camden’s cultural and leisure offer*”

which includes “*theatres of national, metropolitan and local/community significance, including part of London’s ‘theatreland’*”.

- 5.11 Paragraph 4.61 notes that demand for cultural and leisure uses can vary over time, and that where proposals would result in the loss of a cultural or leisure facility applicants will be expected to “*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 which will be set out in Camden Planning Guidance. The marketing exercise should be undertaken over a period of not less than 12 months and be based on a realistic price/rent which is supported by the Council*”. This denotes the type of information an applicant would be expected to provide in a case such as this proposal. This paragraph also notes, “*Once lost, cultural and leisure uses cannot easily be replaced as land and construction costs make it challenging to provide new facilities*”.
- 5.12 Within paragraph 4.61 is a reflection of the point outlined in Theatres Trust’s Statement of Case as to why this site is critical for the delivery of new large scale theatre in the West End for which I can show need and demand to exist. That is, “*Once lost, cultural and leisure uses cannot easily be replaced as land and construction costs make it challenging to provide new facilities*”. Again, it will need to be considered whether the loss of the site for cultural use would undermine wider land use considerations.
- 5.13 Paragraph 4.62 adds further detail on loss of existing cultural and leisure uses and re-instatement either on-site or elsewhere. It states, “*It is considered that 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.*” In this case the building does have cultural history and unique character depicting ‘drama through the ages’ via its decorative frieze which should be considered in terms of the compatibility of the proposed uses with the building’s character. Further is the consideration of the building as part of a wider cluster of theatres, in particular those along Shaftesbury Avenue especially the Shaftesbury Theatre which has become more detached from ‘Theatreland’.

#### *Policy D2*

- 5.14 Furthermore, Policy D2 of the Local Plan further reflects and reinforces the heritage considerations discussed in my case in relation to NPPF policy set out in greater detail below and related to the building’s character and form as a theatre building.
- 5.15 The policy states:

*“The Council will preserve and, where appropriate, enhance Camden’s rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens and locally listed heritage assets.*”

*Designated heritage assets*

*Designated heritage assets include conservation areas and listed buildings. The Council will not permit the loss of or substantial harm to a designated heritage asset, including conservation areas and Listed Buildings, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

- a. the nature of the heritage asset prevents all reasonable uses of the site;*
- b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation;*
- c. conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- d. the harm or loss is outweighed by the benefit of bringing the site back into use. The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm.”.....*

*“Listed buildings are designated heritage assets and this section should be read in conjunction with the section above headed ‘designated heritage assets’. To preserve or enhance the borough’s listed buildings, the Council will:*

- i. resist the total or substantial demolition of a listed building;*
- j. 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; and*
- k. resist development that would cause harm to significance of a listed building through an effect on its setting”.*

- 5.16 There is clear significance in the building being utilised for cultural use, a relationship which would be largely severed under the nature of the proposed development.

National Planning Policy Framework (2019)

- 5.17 The NPPF was published in March 2012 and last revised in June 2019. Paragraph 8 sets out three interdependent overarching objectives to achieve sustainable development which includes an economic objective ensuring sufficient land of the right type is available, a social objective which supports social and cultural well-being and an environmental objective which contributes to protecting and enhancing our built and historic environment.

- 5.18 The NPPF goes further with regard to the protection of cultural facilities within paragraph

92, seeking authorities to “*plan positively*” within planning policies and decisions for community facilities including cultural buildings. Specifically part c) guards “*against the unnecessary loss of valued facilities and services*”.

- 5.19 There is extensive guidance within the NPPF on determining proposals impacting on heritage assets and their wider setting, focused in particular on paragraphs 189-196.
- 5.20 The NPPF places “*great weight*” on ensuring the conservation of heritage assets and their significance, “irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance” (paragraph 193). I consider the proposed development to undermine the building’s historic character and function.
- 5.21 A key element of the building’s significance as a heritage asset is in its external appearance and materials in particular to its main front elevation (Shaftesbury Avenue). Most fundamental to that significance is its frieze, as described in detail within our Statement of Case. Deterioration has occurred and I would suggest this might have been better managed by the appellant or the previous landowner, and the current tenant. The appellant has placed great weight on the cost of restoring the building as a justification for requiring a more ‘commercial’ development and continued cultural use at the existing scale being unviable. The suggested cost of restoration should not be used by the appellant as a justification for alternative use given the building’s current deterioration could have been avoided or better managed.
- 5.22 Paragraph 194 requires “*clear and convincing justification*” where there would be harm to the significance of a designated heritage asset including from its alteration. Whether the level of harm created by the proposed development is ‘substantial’ or ‘less than substantial’, there should be appropriate marketing to enable the asset’s conservation and for any harm to be outweighed by the public benefits arising from the development as articulated through paragraph 196. This states, “*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.*”
- 5.23 In this case, the optimum use would be the purpose for which the building was intended (theatre) or its existing use. We do not consider the appellant to have provided “clear and convincing justification” that compatible cultural use cannot be viable, indeed our own evidence demonstrates there is demand. Neither does this proposed development put the building to a use consistent with its conservation without causing harm to its significance or provide the appropriate marketing to enable its conservation set out in paragraph 195.
- 5.24 A further aspect of the building’s significance is that it is a theatre building within the recognised ‘Theatreland’ cluster and in particular is located on Shaftesbury Avenue which contains a near-continuous chain of theatres and places of entertainment from its southern junction at Piccadilly Circus to its northern junction at High Holborn with the Shaftesbury Theatre. Loss of the cultural function as the dominant landuse would be

detrimental to the cluster and exacerbate severance of the Shaftesbury Theatre from the rest of the West End.

London Plan (2016)

*Policies 2.10 and 2.11*

- 5.25 The current London Plan (Consolidated with Alterations since 2011) was adopted in March 2016. A new London Plan was subject to Examination in Public between January and May 2019 with the resulting report and recommendations being submitted to the Mayor of London on 8<sup>th</sup> October 2019. An 'Intend to Publish London Plan' was issued on 9<sup>th</sup> December 2019 to the Secretary of State.
- 5.26 Although the Secretary of State issued a direction not to publish the new London Plan, the areas of concern fall outside of the matters I have covered. The 'Intend to Publish' London Plan and adopted London Plan are quite consistent with regards to matters of cultural uses and heritage and contain strong policies on each. Furthermore, having applied the test of NPPF paragraph 48 with regards to the level of weight that can be applied to emerging policy, it is clear that new London Plan policies referred to carry substantial weight as they have passed through Examination in Public with broad support and no substantial objection.
- 5.27 Both the current (2016) and proposed new (2019) versions of the London Plan discuss the strategic significance of the Central Activities Zone (CAZ) and the distinctive clusters within. This specifically includes the area around Soho and Covent Garden and 'Theatreland' within the West End. The London Plan, and in turn London Borough of Camden, must support those clusters. Specifically, Policy 2.10 part A.a of the existing adopted London Plan seeks the enhancement and promotion of *"the unique international, national and London wide roles of the Central Activities Zone (CAZ), supporting the distinct offer of the Zone based on a rich mix of local as well as strategic uses and forming the globally iconic core of one of the world's most attractive and competitive business locations"*.
- 5.28 Policy 2.11 part A.e goes further, specifying that along with Policy 4.6 that the Mayor will and boroughs should *"recognise, improve and manage the country's largest concentration of night time activities in Soho/Covent Garden as well as other strategic clusters in and around CAZ in line with Policy 4.6"*.
- 5.29 Theatres, and 'Theatreland' are specifically as cited in supporting text paragraph 2.48 as a key element of this cluster that is to be supported.

*London Plan Policy 4.5*

- 5.30 Existing London Plan Policy 4.5 supports London's visitor economy and seeks to stimulate its growth, including improving the range and quality of provision. It is primarily aimed at providing an increase in quality visitor accommodation. However, even within this policy, express reference is made to cultural attractions; 4.5.f is clear that boroughs

should :

*“promote, enhance and protect the special characteristics of major clusters of visitor attractions including those identified in Strategic Cultural Areas in Map 4.2.”*

- 5.31 Map 4.2 shows the West End as a Strategic Cultural Area.
- 5.32 Policy 4.5B requires developments to “be consistent with the strategic location principles” set out within part A of the policy.

#### *London Plan Policy 4.6*

- 5.33 Policy 4.6A supports, at a strategic level, *“the continued success of London’s diverse range of arts, cultural, professional sporting and entertainment enterprises and the cultural, social and economic benefits that they offer to its residents, workers and visitors”*.
- 5.34 Policy 4.6C.d encourages local authorities, through their local plans to “promote and develop existing and new cultural and visitor attractions”
- 5.35 Paragraph 4.32 of the supporting text states that : *“The Mayor’s Cultural Metropolis seeks to maintain the capital’s status as one of greatest world cities for culture and creativity, and addresses the need to increase the provision of arts and culture facilities in outer London, providing targeted support for the creative industries.”*
- 5.36 It is clear that the Mayor and the London Plan place a great emphasis on the retention of existing facilities and the provision of new ones. TheatreLand is again referenced within paragraph 4.33 as being a significant cluster which should be protected and enhanced.

#### London Plan (Intend to Publish version, 2019)

- 5.37 This version of the London Plan goes further, and while yet to be adopted, has been amended following Examination in Public and can carry great weight dependent on the outcome of the test set out within paragraph 48 of the NPPF.

#### *Policy HC5*

- 5.38 Undertaking the test of NPPF paragraph 48 this policy can be considered to have significant weight; at Examination there was no objection to the principle of the policy with representors either supporting the policy or seeking a broadening to consider wider aspects of social and cultural uses.
- 5.39 Policy HC5A 1) provides that development plans and development proposals should:

*“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...*

- 5.40 The supporting text within paragraph 7.5.2 explains that cultural venues for the purposes of the policy include cinemas and theatres. Paragraph 7.5.3 makes reference to the economic and social benefits of the culture sector and creative industries.
- 5.41 Part A 3) of the policy reflects the existing London Plan in requiring strategic clusters (such as Theatreland) to be “*protected and enhance[d]*”.
- 5.42 Part A of the new policy is more onerous than the existing London Plan as it requires an assessment as to whether the particular venue and use can be said to be “protected” by the proposals, rather than a broader assessment as to the application’s impact on the strategic cluster as a whole.
- 5.43 In common with Policy HC5, Policy HC6 can also be considered to have great weight on the basis there was broad support for the policy.
- 5.44 Policy HC6.B.6 protects and supports evening and night time cultural venues including cinemas and theatres.
- 5.45 This version of the plan also goes into greater detail as to the contribution of these venues to London, both financially and in terms of the cultural well-being of its residents, and highlights the challenge of identifying appropriate spaces.

## **6. Analysis of the appeal scheme and the effect of the proposal on the provision of cultural and leisure facilities**

- 6.1 Although theatres have not been fully operating in 2020 due to Covid-19 restrictions, and this evidence is based largely on pre-Covid information, I expect need and demand for theatre to return as set out more fully within Section 7 of my evidence and this is also reflected within operator and producer statements as set out in Appendices 1-10.
- 6.2 Policy C3 within the Camden Local Plan is an up to date and particularly relevant policy. I consider that it is one of the most important policies for the determination of the appeal.
- 6.3 The main point to note within Policy C3 is the statement that “*the council will seek to protect cultural and leisure facilities*”. This denotes a presumption against the loss of such facilities, albeit there is scope for loss if the specified criteria are met. It is clear this policy applies to cinemas and theatres amongst other uses; theatres are referenced first within supporting paragraph 4.49. Paragraph 4.50 cites cinemas and theatres and paragraph 4.54 confirms Policy C3 applies to “*cultural and leisure uses*” which “*fall under D2 of the Use Classes Order or are sui-generis*”. Furthermore ‘Intend to Publish’ London Plan policy also explicitly seeks to “*protect and support evening and night-time cultural venues such as...theatres, cinemas*”.
- 6.4 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 has substantially altered the classifications of uses particularly those associated

with town centre, commercial, employment, social and cultural provision. It has resulted in the loss of the former D2 use class with many former 'D' uses now falling under Class F1 or F2. Some uses including cinema now fall outside of the use classes and are classified as Sui Generis. Regardless of the technicalities as to whether some cultural and leisure uses remain protected given the specific wording of paragraph 4.54 and its reference to D2, although I would argue the policy intention is clear and remains valid, the policy explicitly covers Sui Generis uses. London Plan policy also clearly and explicitly covers cinema use.

- 6.5 This alteration to use classes has strengthened protection of cinemas as cultural facilities and had a material impact on how change of use can be considered, in particular that any proposed change of use would now be subject to a planning application with need to pay regard to relevant policy. As such the possibility of shifting use of a cinema to another use within D2 to undermine policies protecting cultural facilities has been extinguished. Any proposal to change the use of a cinema or substantially alter its level of provision beyond introducing additional functions which are clearly ancillary to cinema as a primary function should be considered on its own merits.
- 6.6 Fundamental to this is demonstration "*to the Council's satisfaction there is no longer a demand*". This includes considering "*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*". As such this should be fully explored by the Appellant and evidenced by way of robust marketing effort and genuine attempt to maintain the building's primary cultural function before alternative non-cultural or leisure facilities such as the development proposed are considered.
- 6.7 It is clear from my evidence supported by statements from established and reputable theatre operators and producers that there is need and demand for additional large-scale theatre and performance space within London's West End more generally and interest for cultural use in this site specifically. This is demonstrable on four fronts:
- That a recent sale of a prominent West End theatre saw a new entrant come forward paying a higher value than might have been anticipated
  - That existing established and reputable theatre owners and operators have indicated strong interest in taking on the appeal site were it to be offered
  - That established and reputable producers have work waiting to go into the West End that cannot be accommodated
  - That audience figures show strong and increasing consumer demand for additional theatre
- 6.8 I am able to provide compelling evidence that attempt by the Appellant to market the site for cultural use, specifically theatre use, either on a freehold or leasehold basis would and should have been met favourably by the market in conflicting with what is stated within the Appellant's Statement of Case. Therefore this key policy test cannot be satisfied. This is a significant consideration in the overall planning balance; failure to robustly evidence efforts to maintain cinema or alternative cultural use such as theatre renders the proposed development in contravention of this key policy. This is



irrespective of the merits and weight which should be afforded to seeking to retain cultural use as a primary function of the site taking into account the impact of development on the building's special interest, character and function as a statutorily listed heritage asset.

- 6.9 Representations in support of my evidence have been received from six major theatre operators, two of which are unnamed for reasons of commercial sensitivity. These are contained within Appendices 1-7. Appendices 8-10 contain further statements from reputable producers; additionally some of the operators who provided evidence also have interests in production and have provided comment on that basis.
- 6.10 There is much interest in taking on West End theatres, either as a new entrant or to expand existing portfolios. A letter from Shaftesbury Theatre which is owned and operated by the DLT Entertainment Group (Appendix 4) and located around 225 metres from the appeal site confirms they are in regular receipt of approaches to acquire their theatre's freehold. Theatre Royal Haymarket with its capacity of 893 – smaller than the indicative capacity of the appeal site – sold in 2018 for around £45 million to Access Industries who were a new entrant to the West End but have major investments across the entertainment industry including pre-existing West End productions. The much smaller Ambassadors Theatre (approximately 444 seats) sold at the end of 2018 for around £12 million and there had been well-documented rival interest who had secured the granting of planning permission for a refurbishments and alterations. The Victoria Palace was purchased for around £26 million in 2014 with a further estimated £60 million spent on its refurbishment; this was originally envisaged as being around £35 million. This demonstrates not only interest and demand for West End theatres by operators but a willingness to make investments into them which would likely be considered unviable on terms acceptable to other types of commercial development.
- 6.11 Whilst paragraph 5.106 of the appellant's Statement of Case references acquisition of theatre as a "trophy asset", further to the Victoria Palace example cited above there is evidence within statements from various operators that there is a willingness to significantly invest in theatre in the West End. The Appellant's argument must be considered in the context of there being questions as to whether the actual cost of restoring theatre use and/or rectifying deficiencies to the building reflects the estimates set out and I will follow up on this subsequently.
- 6.12 The letter from Shaftesbury Theatre also confirms that had an approach been made by the Appellant the purchase or management/operation of the appeal site would have been seriously considered. An existing West End theatre operator (anonymous for reasons of commercial sensitivity) have confirmed that they believe the appeal site to represent the only remaining opportunity in the West End to revive a large-scale theatre space noting its ideal location, footprint and volume with stage and fly tower for large scale productions; they have stated they would be interested in the site (Appendix 1). The view of this site representing a unique opportunity is shared by Trafalgar Entertainment (Appendix 5), owner and operator of Trafalgar Theatre in the West End, a significant producer, owner of the UK's largest provider of performing arts education and a forthcoming cinema operator. They also confirm an interest in the lease or purchase of

the appeal site and a more recent letter (Appendix 6) written after the onset of Covid-19 restrictions maintains expression of interest. Cameron Mackintosh Limited/Delfont Mackintosh Theatres (Appendix 2) who own eight of the West End's major theatres note they would expect interest in the site including from themselves. Selladoor (Appendix 3) who operate three theatres elsewhere in the UK and are a major producer working internationally note in their letter a lack of theatres in the West End to receive major productions (first class) trying to enter the London market and that they would be interested in purchase or long lease of the appeal site should it become available. An e-mail from one of Britain's leading theatre operators who wish to remain anonymous for reasons of commercial sensitivity (Appendix 7) also confirms interest in acquisition or long-term lease of the appeal site.

- 6.13 Paragraph 5.107 of the Appellant's Statement of Case states, "Nevertheless, formal approaches were made in November 2019 to a number of prominent theatre groups to ascertain (a) whether there would be any interest in the property, and (b) if so whether any offers made would be genuinely financially viable." Paragraph 5.108 went on to state, "To date, only one offer has been received, which is being analysed by the Appellant" and paragraph 5.109 states, "No other formal offers have been received". The information outlined in paragraph 6.10 above, when considering the stature, track record and reputation of the owners, operators and producers who have provided statements, conflicts with the account of marketing effort expressed by the Appellant. Again, the Appellant's opinion as to the financial viability of any such offer is questionable in the context of cultural and theatre development and investment.
- 6.14 The £55,000 per seat value expressed by the Appellant within paragraph 5.108 of their Statement of Case can be considered flawed and this also reflected within many of the statements received in support of my evidence.
- 6.15 The appeal site is in existing cultural use and the existing use value should be represented within the appellant's marketing effort. Instead it can be considered that 'hope value' has been utilised as a means of demonstrating unviability for cultural use. In Theatres Trust's Statement of Case it highlighted missing information which would have enabled more thorough scrutiny of the appellant's claims at an earlier stage, particularly the Gardiner & Theobold report, to assess restoration costs; the income projections that viability has been based on; substantiation of paragraphs which discuss costs per seat of theatres recently purchased; and the list of operators the appellant has approached and the terms offered to them.
- 6.16 The Appellant has since distributed the Gardiner and Theobold report. Having sought further specialist advice on the information contained, I am of the view that the demolition costs indicated which are associated with the removal of internal additions for cinema use are inflated and while two assumptions show a challenging build the figure still appears too high.
- 6.17 Similarly, a benchmark figure for theatres of over 500 seats from Spon's (a cost guide for quantity surveyors) denotes a rate of between £4,200 and £5,300 per square metre. As such the cost per square metre within the Gardiner and Theobold report is also high.

The cost for substructure appears to be double-counted as it sits partly within demolition cost. In turn the varying price is already at the upper end of what would be expected so should come down from that point rather than up. The overall estimate I have been advised is a build cost of £30-35 million. In the context of other recent West End theatre projects and the longer period of return for cultural development than is generally accepted within commercial development (around 25 years) this would not seem to make a theatre development at this location unviable.

- 6.18 Acceptable periods of return for theatre investments are substantiated within various operator statements. In Appendix 5 Trafalgar Entertainment confirm, “Our equity backing (which is drawn from US pension fund investment) takes a longer term view of any investment compared to a traditional private equity model”. A timespan of 20-25 year Return on Investment is stated by Selladoor (Appendix 3). One of Britain’s leading theatre operators have also confirmed that return on capital investment for the appeal site would be longer than accepted by a commercial developer (in excess of 20 years) but that the opportunity to own or operate the site is one in which they would “greatly like” to be involved in. It must also be considered that assumptions of total investment into the building may be offset by increased value and economies of scale should it be run as part of a wider portfolio.
- 6.19 Nonetheless, within Appendix 4 Shaftesbury Theatre have undertaken a critique of the Appellant’s information and provided their own estimates of build and fit-out costs. They state that they believe the cost of purchase and renovation of the building to “not be as costly as is suggested” and consider the Charcoalblue proposal “to be somewhat overblown”. They also note there may be further opportunities to increase seating capacity or provide ancillary areas which could improve profitability of a theatre. Trafalgar Entertainment (Appendix 6) are broadly in agreement, also noting the projected cost of £8,526 per square metre to be at the upper end of comparable projects even taking into account the constraint of the building’s listing with particular reference to retaining its façade. One of Britain’s leading theatre operators (Appendix 7) concur that the £42 million development cost “appears high” and having had involvement in and exploration of significant restoration and redevelopment projects they would “expect the costs to bring the Saville Theatre back to life to be less than this”.
- 6.20 A further consideration supporting the costs associated with restoring theatre use at the site being less than suggested, as noted by one of Britain’s leading theatre operators, is that (particularly if there is a lack of historic fabric internally) there is potential for a modern internal fit-out which can be designed to “a controlled budget”.
- 6.21 Further to significant investment into Victoria Palace referenced previously, there is also a significant refurbishment project at the Grade I listed Theatre Royal Drury Lane by LW Theatres. In their letters (Appendices 5 & 6) Trafalgar Entertainment have cited their project to revert the two performance spaces at Trafalgar Theatre back to a single auditorium with larger capacity. NIMAX are bringing forward a new theatre as part of the Tottenham Court Road Crossrail redevelopment on the site of the former Astoria venue. In their statement (Appendix 4) Shaftesbury Theatre highlight a major investment to create new bar and hospitality areas. This again demonstrates current significant

investment and expansion of theatre within the West End; furthermore Shaftesbury Theatre note their works have been funded by borrowing which shows there would not need to be a reliance on public subsidy and grants to deliver a project at the appeal site.

- 6.22 Fundamentally, along with the inadequate evidence of marketing I have articulated as it conflicts with information provided by operators, cost and viability is another consideration where the proposed development fails the tests of policy. The appellant has clearly failed to adequately demonstrate either the existing cultural provision or an alternative such as theatre cannot be viable on a basis acceptable to cultural operators.
- 6.23 Significant need for additional theatre space in the West End is also clearly demonstrated through statements by producers as well as operators, who note a shortage of provision to handle shows available and/or keen to come into the West End.
- 6.24 Selladoor state, “there is a distinct lack of West End Theatres to house the number of 1st class productions trying to get into the London marketplace”. For clarification, the definition of first class within a theatre producer’s glossary provided within Appendix 12 bases this categorisation on the size, location and reputation of the theatre, the show’s budget, the use of a professional creative team and performers and on anticipated production run. Generally first class productions are the largest and most prominent shows which might also tour around large venues nationally and internationally. Given the role and prominence of the West End’s theatre offer internationally and how important it is to the economy, and that it is specifically recognised through planning policy and designations, constraints on provision have the potential to undermine its significance and status in the longer term.
- 6.25 The opinion of there being a shortage of theatres in the West End is shared by Shaftesbury Theatre, who note there are eight shows seeking residency at their theatre should the current production cease. The National Theatre, one of the UK’s most prominent venues and a major producer with several successful and internationally-renowned shows which have transferred to the West End, have also provided a statement (Appendix 9). They state that, “it is extremely hard to find theatres available for transfers” and go on to say they currently have three productions for which they cannot find accommodation. They also note that other producers are in the same position; this is reflected within statements from Empire Street Productions (Appendix 8) and Jamie Wilson Productions (Appendix 10). These statements provide substantiation to the assertion there is a need for further large-scale theatre within the West End because if the appeal site were to be retained for theatre use there is clear evidence of product to go into it.
- 6.26 Having established there is operator interest in ownership or management of the appeal site and that major producers have shows awaiting a West End base, the final aspect to demonstrate continuing need and demand is to show there is sufficient audience. Within Theatres Trust’s Statement of Case it included West End audience figures for the 2018 year released by UK Theatre and the Society of London Theatre (SOLT). Subsequently the 2019 figures have been published and show box office revenues have continued to grow (now sixteen consecutive years) and average West End attendance in 2019 was up

to 80.7% of capacity. To add further context, while overall audience figures were down 1.4% the number of performances was down 1.8%. This can be directly linked to closures during the reporting period of two of the largest theatres - the Dominion and Theatre Royal Drury Lane – for works. This information is set out in Appendix 11. Clearly Covid-19 will heavily impact on audience figures for 2020 but as explained within Section 7 and statements within appendices recovery is expected.

- 6.27 This is indicative of appetite for additional theatre provision from audiences. It is also reasonable to note that the statements received and appended to this report cover ownership and/or operation of a significant proportion of larger West End theatres. Whilst there might be an argument that new entrants seeking to enter the market might be less concerned as to whether a restored appeal site would undermine other venues, a number of respondents have existing theatres and some have multiple sites. Neither status has prevented such operators expressing interest in the site which suggests further provision and competition is not a concern.
- 6.28 I consider the above to represent compelling evidence that the policy requirement to demonstrate *“to the Council’s satisfaction there is no longer a demand”* has not been met, and that the appeal site can very much *“support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough”*. To further support this, I move to the practicality of retaining cultural use given the possible costs associated with it and the building’s condition and why it would represent a better outcome for the appeal site from an economic, heritage and placemaking perspective than the Appellant’s proposal.
- 6.29 Arguably the primary consideration impacting the financial viability and practicality of a theatre project, or whether an alternative use such as the Appellant has proposed is appropriate, is the extent to which rebuild is required and what structure and fabric remains. Following a site visit on 16<sup>th</sup> March 2020 it appears there may indeed be greater original features and structure in place than was envisaged and reported when the application was determined. The stair cores at front of house and the grid within the fly tower are visibly still in place. It is possible the complex girders that would have supported the circle and balcony levels remain but this would require additional survey work to ascertain. Although this cannot be conclusively demonstrated at this stage, they have remained in situ in other former theatres which converted to cinema including the Odeon in Bradford. It is not unusual for theatres to be converted to cinemas and back again; there are for example current significant projects to return the Bradford Odeon, Stockton Globe and Walthamstow Granada back to live performance use. This has a few implications for this development and the viability of theatre use; if the girders are in place it could potentially reduce costs for re-fit or re-build as a theatre. In turn it could also markedly increase demolition costs, reducing the relative viability of alternative uses such as put forward by the Appellant.
- 6.30 The confirmed presence of original features (for example the grid as cited above), as well as the potential for other original features to be in place, also has implications on issue a. in terms of the effect of the proposal on the significance of the host building. I have discussed heritage matters more fully within Section 5 of this evidence.

- 6.31 Moving on to other criteria of Policy C3, criteria d. and e. are also important in assessing the merit of supporting non-cultural alternative uses. As set out in this evidence I consider the proposal would undermine the opportunity to re-establish theatre use at this site if cinema use of existing scale cannot be viable and this would better contribute towards enhancing the character of the area and the strength of the West End than a hotel. This is not to mention a theatre being more consistent with the heritage and built form of the appeal site. The reason hotels are attractive to operators in this part of London is precisely because of the area's general character and international reputation for theatres and culture. The appeal site presents a unique opportunity to reinforce the strength of 'Theatreland' and re-integrate the Shaftesbury Theatre (which itself sits on a site being improved through new public realm) into the wider 'Theatreland' cluster. This in itself has wider public and placemaking benefits for the appeal site.
- 6.32 In contrast, I consider the Appellant's proposed development would undermine the overall character of the area and detract from the reason the area is special and recognised as a specialised cluster within the London Plan (paragraph 2.48 in support of Policy 2.10 and 2.11).
- 6.33 The Appellant argues that as some cinema floorspace is being re-provided, that the proposals do not amount to a "loss" of the facility. This is a matter returned to below, however, I consider that this part of the policy does apply.
- 6.34 In any event, even if the Appellant's view is correct, the third part of Policy C3 applies which deals with re-provision. First, it is notable that the policy views re-provision of a facility as being an "exceptional scenario" for which its own set of criteria needs to be addressed (parts i. – i.v.). This includes loss of cultural heritage and changes in the mix of uses arising from the loss of the existing facility. On at least three criteria the proposal is in contravention – parts i. to iii. – and is likely to also fail part iv. because the cinema is being described as more of a 'boutique' offer compared to the more mainstream facility currently in place.
- 6.35 The supporting text within paragraph 4.55 of Policy C3 articulates that the policy aims to ensure "*particular attention*" is given "*to the value provided by cultural and leisure facilities in planning decisions. It also seeks to address their vulnerability from higher value land uses*". Satisfying the requirements of this policy includes evidence that the site is unable to support alternative cultural or leisure use and information on the impact of the proposal on the range of cultural and leisure facilities.
- 6.36 I consider that the appeal scheme fails to meet the overarching aim of this policy, as expressed within the first paragraph in that the existing facility is lost and so will not "be protected" as required by the policy. I do not consider that the proposal to re-provide a reduced extent of cinema floorspace within a mixed use/hotel setting is a true re-provision of this use as it is materially different to the existing use. Therefore, it is sensible to describe the existing facility as being lost and there is therefore conflict with this part of the policy.
- 6.37 I also consider that paragraph two of the policy applies as the existing facility will be lost

in its current form. As above, the replacement cinema floorspace is a materially different offering to the current use due to its incorporation within a wider hotel-led scheme and location within the basement floors of the building. At present, the building offers a dedicated cultural use, whereas the appeal proposals do not have such a focus on cultural uses and instead, the cinema very much takes the back seat to the hotel use. It is also important to note that for cultural venues it is not necessarily the quantum of floorspace or seating that is an important measure of adequacy of re-provision but rather the volume of space offered.

- 6.38 In the context of the proposed development including some degree of re-provision, it also fails to meet any of the associated considerations of Policy C3. It does not explore the impacts on re-provision on existing users of the facility in particular its affordability for existing users and it would result in harm to cultural heritage. The premise of the proposed facility being of a “better standard” is based on its ‘boutique’ offer rather the more affordable and ‘mainstream’ offer currently in place. As such, even if the appellant successfully argues that the ‘loss’ aspect of Policy C3 does not apply as they have tried to argue in their Statement of Case, in any case it also fails to accord with policy on re-provision.

## **7. Statement on the impact of Covid-19 on this evidence**

- 7.1 As with most sectors Covid-19 has caused great uncertainty, with theatres and performance venues being particularly affected as they were the first uses forced to close and will likely be amongst the last to fully return. It is well documented that the cultural sector has come under particular challenge although at the time of submission of this evidence the number of theatre owners/operators falling into administration or theatres having their operation relinquished has been very low (in single figures).
- 7.2 Para about West End operators are extremely well financed and have significant investors/and or diverse portfolios along with scale of operations which helps secure them.
- 7.3 Furthermore, there remains confidence in the theatre industry from operators and this is set out in some of the statements provided within our Appendices. Trafalgar Entertainment have progressed with their significant capital programme to revert Trafalgar Studios back to a single auditorium along with tendering for operation of Theatre Royal in Sydney, Australia. They report “pent-up” demand from consumers and strong sales for 2021 shows which are on sale. Shaftesbury Theatre acknowledge short-term judgements are difficult, but that there “will be a thirst for live entertainment as we return to normal”. They cite how performances and audiences were maintained during both World Wars, suggesting the “escape” provided by theatre is something that is sought in times of challenge. Selladoor similarly report strong demand, as well as that audiences have supported their regional venues through donations and ticket re-booking rather than refunds. Delfont Mackintosh highlight the instant sell-out of their limited run of Les Miserables concerts in December 2020 and similarly I understand limited events including a revised pantomime to be run at London Palladium have been popularly received.

7.4 It should also be noted that most of the statements from operators have been received after the impacts of Covid-19 became known; due to understandable critical business planning early in the year operators were unable to resource or entertain the provision of such information in time for the original submission date of this Proof of Evidence. This would have materially undermined my case, an argument articulated to other parties when the possibility of postponement of this Inquiry was first raised. Therefore expressions of interest in the appeal site have been made despite Covid-19 being a known risk and uncertainty.

## **8. Conclusion and planning balance**

8.1 Overall, I have been able to demonstrate this proposal fails to meet the tests of Policy C3 because it has sought to introduce an alternative land use without robustly demonstrating cinema or existing cultural use are no longer required and cannot be viable. It also conflicts with Policy D2 because it fails to preserve and enhance the site as a heritage asset, despite cultural (theatre) use being a demonstrably viable option which would better enable its conservation and maintain its character than the nature of the development proposed. Although I accept in principle hotel use can be acceptable at this site as it is broadly in conformity with Policy E3 (not withstanding matters of scale and access) I do not consider this to outweigh the proposal's contravention of Policy C3.

8.2 Neither do I consider it to offer the level of public benefit which would justify even less than substantial harm to a heritage asset (arguably it can be considered to constitute substantial harm) or loss of the site as a cultural asset which would otherwise contribute to enhancing and strengthening the 'Theatreland' cluster and the West End's overall cultural offer.

8.3 Moreover, this site likely represents the last and only opportunity to deliver large-scale theatre within the West End with the volume and footprint to provide a fly tower. Being an 'island' site accessible from all sides this makes it particularly attractive; access can be a challenge for theatres due to the need to transport in and out large sets and equipment. There is strong evidence that this is coupled with compelling need and demand for further large-scale theatre with demonstrable interest in the application site specifically from established and reputable operators. The appellant's own information acknowledges they had received at least one offer which in itself is proof that theatre use at this site can be viable thereby giving strong grounds to refuse this appeal.

8.4 Furthermore there is also significant demand for theatres as a product for producers, with there being more shows waiting to go into the West End than can be accepted as demonstrated by statements from producers.

8.5 Further to Camden's Policy C3 I also consider that this proposal conflicts with the highest national strategic objectives set out in paragraph 8 of the NPPF because:

1. There is a demonstrable need and demand for additional large-scale theatre within London's West End. Furthermore, provision of such a large-scale theatre would



better contribute towards the objectives and policies of the London Plan and Camden Local Plan as discussed above than the development proposed. There are no other clear opportunities to deliver large scale theatre within the West End, an area which is an internationally-renowned cluster of theatre and cultural venues. Therefore the proposed development would fail to ensure “sufficient land of the right type” is available for this purpose, more so in light of it already being in cultural use and having been purpose-built as a theatre.

2. The proposed development would result in a loss of cultural provision, the re-provided cinema providing neither the floorspace, volume and scale of existing provision nor the same type of offer for its existing users. If cinema use is no longer required or viable, alternative cultural use should have been explored with theatre being the obvious first option given the building’s history, character and built form along with evidence of need. The building has particular character and historic cultural significance. Therefore neither would the proposed development support social and cultural well-being.
  3. Additionally, the proposed primary land use – a hotel – and the associated alterations necessary to deliver the development will not put the building to a use consistent with its conservation without causing harm to its significance and character as a designated heritage asset. Therefore, the proposed development would also fail to protect or enhance the built and historic environment.
- 8.6 To satisfy paragraph 92 of the NPPF (2019) maintaining existing cultural provision and supporting the site’s future as a cultural asset must be the first priority and meeting this national policy is reflective of the great weight which must be placed on ensuring these appeals are allowed only if it can be demonstrated with great certainty that there is no need for the building as a cultural facility at its current scale and that all reasonable efforts to market the building for such use have been exhausted
- 8.7 Similarly the proposal conflicts with the extensive guidance on heritage outlined within the NPPF. Again, like the Camden Local Plan, while in principle hotel use could be acceptable at the site under national policy I consider this to be outweighed by other considerations.
- 8.8 Furthermore this is also the case for both existing and ‘Intend to Publish’ versions of the London Plan, particularly as the site within cultural use would be consistent with the identified cluster for the area.
- 8.9 Further to lack of need, I also consider the hotel use to be the primary function of the proposed development and I am therefore in agreement with the Council within paragraph 2.56 of their delegated report that the building’s special interest and character would be harmed. This building, its character and form is inextricably linked to theatre and performance by virtue of its frieze. Uses which deviate from that can be considered less compatible with the building’s character and function and therefore also contrary to relevant national, London and local policy on heritage.

- 8.10 The evidence in this report confirms that theatre projects operate on different expectations of financial return on investment compared to other development types and typical measures of viability do not necessarily apply. Nonetheless evidence from operators shows they consider theatre use to be viable and likely costs of conversion to be within the parameters of what would be considered acceptable.
- 8.11 Fundamentally, applying an overall planning balance, I consider that Local Plan Policy C3 has not been complied with and this outweighs any benefit offered by the development and its compliance with other parts of the Local Plan, the NPPF or the London Plan.