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2020

Proof of Evidence of Laurie Handcock

Odeon Cinema, 135-149 Shaftesbury Ave, London
WC2H 8AH

DRAFT V3

APP/X5210/W/19/3243781 (Appeal A) and
APP/X5210/Y/19/3243782 (Appeal B)

Iceni Projects Limited on behalf of Capital Start Ltd

November 2020

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Proof of Evidence of Laurie Handcock
ODEON CINEMA, 135-149 SHAFTESBURY AVE,
LONDON WC2H 8AH

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1. INTRODUCTION

- 1.51 My name is Laurie James Handcock and I am the Director of the Heritage team at Icen Projects. Icen Projects is a significant real estate consultancy, with a central planning focus, and teams specialising in areas, besides Heritage, including transport planning, sustainability, design, and project delivery and viability. The firm is based in London, with separate offices in Glasgow and Manchester. The Heritage team act for a wide range of private and public-sector organisations and advises on all aspects of historic environment planning policy and practice.
- 1.52 I hold a first degree (Master of Arts) in History from the University of Cambridge, and a postgraduate degree (Master of Science) in Historic Building Conservation from Oxford Brookes University. I have extensive professional experience in the field of planning and conservation gained in the private sector, and have appeared as an expert witness, or as part of the consultant team, at a number of appeals.
- 1.53 I have worked with Icen Projects since February 2016, having previously spent five years working for RPS CgMs, ultimately as a Senior Associate Director. During my career I have advised clients on a wide range of planning and heritage matters including the preparation and submission of planning and Listed Building Consent applications in relation to a range of designated heritage assets including Hampton Court Palace, Kensington Palace and Doddington Hall, Cheshire (all Grade I). I have also provided heritage advice on a number of large strategic housing and infrastructure projects, including at Alconbury Weald, Huntingdonshire, and the redevelopment of London Bridge Station.
- 1.54 I have been a full Member of the Institute of Historic Building Conservation since 2013. I am also a past Trustee, and past and founding Chair of the Crystal Palace Park Trust, which is intended by the London Borough of Bromley to take ownership of Crystal Palace Park, 200 acres of Registered Park and Garden containing a number of listed buildings and non-designated heritage assets. I am also a member of the Hertfordshire Design Review Panel and Watford Place Panel, and have sat as a guest panellist on the Redbridge Design Review Panel.

Background and Scope of Evidence

- 1.55 This proof of evidence has been prepared on behalf of the appellant, Capital Start Ltd, in relation to two linked applications (LPA References 2017/7051/P ('The Planning Application') and 2018/0037/L ('The LBC Application')) seeking planning permission and listed building consent for the redevelopment of a site identified as '135-149 Shaftesbury Avenue, London, WC2H 8AH', referred to hereafter as 'the appeal site'.

1.56 The evidence which I have prepared and provide for this appeal reference APP/X5210/W/19/3243781 (Appeal A) and APP/X5210/Y/19/3243782 (Appeal B) 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.

1.57 The two applications to which this appeal relates, 2017/7051/P and 2018/0037/L, seek consent for the following:

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.

1.58 The applications were refused under Delegated Powers by officers on 5 July 2019. The refusal for The Planning Application listed 14 reasons for refusal, while The LBC Application provided one Reason for Refusal. For the former, one Reason for Refusal related to Heritage matters, as follows:

1. *The proposed rooftop extension, by reason of the proposed height, mass, detailed design and materials would compromise the form, architectural character and historic interest of the host listed building, and in combination with the change of its main use to a hotel, would result in less than substantial harm to the significance of the host listed building and nearby surrounding Seven Dials and Denmark Street Conservation Areas, contrary to policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.*

1.59 It should also be noted that Reason for Refusal 2 for this Application refers to Heritage policy as set out within Camden Council's Local Plan, stating that,

2. *The applicant has failed to demonstrate that the proposed development would ensure the provision of the maximum reasonable amount of replacement cultural or leisure facilities within the scheme contrary to Policy C3 (Cultural and leisure facilities) and Policy D2 (Heritage) of the Camden Local Plan 2017.*

1.60 A near-identical wording was used for the Reason for Refusal given for The LBC Application as was provided as Reason for Refusal 1 of The Planning Application. It stated as follows:

1 *The proposed rooftop extension, by reason of the proposed height, mass, detailed design and materials would compromise the form, architectural character and historic interest of the host listed building, and in combination with the change of its main use to a hotel, would result in*

less than substantial harm to the significance of the host listed building and nearby surrounding Seven Dials and Denmark Street Conservation Areas, contrary to Policy D2 (Heritage) of the Camden Local Plan 2017.

- 1.61 The only difference between the two Reasons relates to the absence of a reference to Camden Local Plan Policy D1 (Design).
- 1.62 I have been involved in the applications for this Site since January 2017, when I was appointed by the appellant to support, initially, pre-application discussions with Camden Council and other stakeholders in relation to the development of the Site. I have subsequently remained active within the team, leading on Heritage and Townscape matters, throughout the application process. Since the decision to postpone the Inquiry was taken in March 2020, further discussions have taken place with the Council's witnesses, and a Statement of Common Ground, and a document providing Additional Information on the building's fabric, have been produced. This Proof should be read alongside these documents.

2. SITE AND SURROUNDINGS

The Site and its Surroundings

- 2.1 The Site is formed of the former Saville Theatre, completed in 1931. It has a rhomboid ground plan, formed of the urban block between Shaftesbury Avenue, New Compton Street, Stacey Street and St Giles Passage. The existing building is a single monolithic block, with a very high solid to void ratio, six storeys in height. It has a small, single storey fly tower, which appears above the eastern end of the building. above its main parapet. The building is mainly of brick, and has a single 'decorative' façade, with the remaining three facades having a more utilitarian appearance.
- 2.2 The Site is located to the north side of Shaftesbury Avenue, approximately halfway between the Cambridge Circus junction with Charing Cross Road and the junction with St Giles High Street and High Holborn. It sits between a large polygonal corner plot site to the west, which extends northwards from Cambridge Circus to the west side of Stacey Street (encompassing 115- 125 Shaftesbury Avenue, in two distinct building ranges); and modern infill linear ranges to the east, which are bounded to the north by New Compton Street. To the rear of the Site are the Phoenix Garden and the Churchyard of St Giles, with St Giles' Church beyond. Although the Site covers a broad and deep building plot and is itself a large building set over 7 storeys, the scale of development surrounding is of a greater scale, with 9 storeys to 151 Shaftesbury Avenue to the east and 12 storeys to 125 Shaftesbury Avenue to the west. The wider setting is otherwise quite constrained with limited opportunities to appreciate the full elevations of the Site in either close or wider views.

Heritage Assets

- 2.3 As outlined above, the Site itself is listed at Grade II. There are a number of other listed buildings within the vicinity of the Site, but most of these are well-concealed by the presence of intervening buildings. The listed buildings that relate most clearly, in visual terms, to the Site, are as follows:
- Church of St Giles in the Fields (Grade I)
 - St Giles Vestry Rooms (Grade II)
 - Elms Lester Painting Rooms (Grade II)
 - 6 Flitcroft Street (Grade II)
 - 12 Flitcroft Street (Grade II)

2.4 These assets are grouped to the north of the Site, the other side of the Phoenix Garden. It should be noted that at no stage during the process were any concerns raised in relation to these wider listed buildings.

2.5 Reference was made during the application period to nearby Conservation Areas, and while the Site does not sit within a Conservation Area, it is positioned close to, and within the setting of:

- Denmark Street Conservation Area
- Seven Dials Conservation Area

Historic Development of the Site and Surroundings

Historic Context

2.6 This area of Camden has a long and distinguished history of settlement. Beyond the walls of the City of London a leper colony was founded at St Giles by Queen Mathilda in 1117, and the historic parish of St Giles was first mentioned in a decree of 1222. The leper colony – later St Giles Hospital – fell within the area of the Site specifically, and the building plan and boundary walls are still visible in the road layout today; Charing Cross Road and Shaftesbury Avenue follow the lines of the western and south-eastern walls respectively. The present Church of St Giles by Henry Flitcroft is built on the site of the hospital Chapel. As the area developed over the following centuries, it obtained a reputation for endemic poverty.

Nineteenth Century to the Present Day

2.7 Shaftesbury Avenue was a new road built along with Charing Cross Road in the 1880s to improve communication between Piccadilly Circus and Charing Cross, and between Charing Cross and Tottenham Court Road. The street was named after the recently deceased 7th Earl of Shaftesbury, who had done a great deal of work for the poor of the area. A new route between Bloomsbury and Charing Cross had been discussed since the construction of Regent Street more than half a century earlier, but the roads were not approved by Parliamentary Act until 1877. As built, the roads were over a mile long and sixty feet wide, resulting in the clearance of some of the worst London slums, and the rehousing of over three thousand working class inhabitants. However, the completion of the roads was not an outright success, instead being characterised retrospectively as ‘a story of lost opportunity,’ the standard of housing being extremely poor and there being stories of fraudulent dealings in the surplus land distribution.

2.8 In the area of the Site, the works involved the widening of the eastern side of the earlier Dudley Street, which led onto Seven Dials to the east and Stacy Street, Church Passage and New Compton Street to the west, backing onto St Giles’ Churchyard and St Giles’ Church beyond. A map of 1877 showing the proposed road layout set over the existing shows that the Site area comprised a front-

and rear-facing row of smaller closely set building plots arranged on the existing road layout. These building plots remained in situ along with the broad building footprint, although the buildings themselves may have changed before the early twentieth century.

- 2.9 The area of the Site remained much in its earlier form until its redevelopment in the early 1930s as the Saville Theatre.

The Saville Theatre: History and Development

- 2.10 The Saville was designed by Thomas Penberthy (T.P.) Bennett, and his firm, TP Bennett and Son, for theatre impresario A. E. Fournier. Fournier was part of a wider group of theatrical businessmen making a business of playmaking during a period when the cinema was making the theatre increasingly less profitable as an endeavour. Nonetheless, it was built as part of a mini-revival in theatre building, during a period of around two years in which the construction of the Phoenix, Streatham Hill, Cambridge (Earlham Street), Apollo Victoria and Prince Edward Theatres were constructed, and the Adelphi and Savoy Theatres were rebuilt. During this short burst of theatre building, a closely connected world of theatre promoters and developers emerged, and Fournier, as well as promoting his own interests, also worked with others included the brothers Prince and Emile Littler, with whom Fournier was involved through his Directorship of Associated Theatre Properties Ltd., and Oswald Stoll, also known for his veteran's charity, the Oswald Stoll Foundation. The Saville was Fournier's main personal interest, and he was the licensee of the venue for fifteen years, from its opening to 1946.
- 2.11 The design team assembled by Fournier also involved, in addition to Bennett, the theatre consultant Bertie Crewe, Gilbert Bayes who executed the external sculptural frieze (still in situ), and A. R. Thomson who executed the murals in the bar foyer and stalls bar (now lost). The building as designed by Sir Thomas Penberthy Bennett (1887- 1980) is steel-framed with largely brick cladding, with architectural detail concentrated to the front of the building, including a deep band of channelled brickwork, the celebrated bas-relief frieze by Bayes of 'The History of Drama through the Ages', and a large decorative stained glass window above the off-set entrance.
- 2.12 The elevational treatment to the sides and rear is deliberately plain and functional with only the heavy cornice wrapping around the sides and to the edges of the rear wall and some vertical and horizontal emphasis added to the brickwork detailing to enliven these otherwise simple façades. To the side and rear elevations there were a series of door and window apertures relating to back-of-house functions. Internally, the theatre was cleverly executed with the constrained planform maximised through use of space at basement level.
- 2.13 Cited by Bennett as 'one of the great moments of my life', his 1970s memoirs published in *The Builder* offer further insights into the process of detailed design:

'In the course of planning the Saville Theatre on a corner of upper Shaftesbury-avenue, I visited many of the surrounding theatres, studying stage requirements and talking to building managers, electricians, box-office managers, the cloakroom attendants – indeed to all connected with the working of theatres. The fascination of the Saville plan was tremendous. Requirements were a spacious, unobstructed auditorium; adequate depth of stage; maximum space in the wings to house rostrums; crossover behind the backcloth to give maximum flexibility for scenery: these were held of fundamental importance. Gee and I visited Berlin too, to study lighting and the use of cyclorama. [...]

As for the auditorium itself, ease of access and exit from and to Shaftesbury-avenue while making sure that noise would not reach the auditorium, was one problem: access by stairs to stalls and upper circle was another. All had to satisfy the Theatres Division of the LCC. As in most industries, the theatre has subsidiary sources of income – in this case from sales of chocolate, programmes, etc., and, of course, the bars; sales depend on the facilities offered. The Saville bars, when opened, were the finest in London.'

Bennett added:

'Hope Bagenal, just coming into prominence as an adviser on acoustics, gave the latest available information, resulting in the Saville having the best acoustics in any theatre up to that moment, a merit achieved by design and not by accident. The Saville also had probably the most complete system of air inlet and extract of its time. [...] as the curtain came down on the last act and the orchestra played reprises of the haunting tunes, I knew instinctively that the first great theatre I had designed was a success – satisfied audience, satisfied actors, and a marvellous theatre supper to round it all off.'

- 2.14 In 1955, following successive changes in ownership, the interior was redecorated by Laurence Irving and a new mural by John Collins was added to the stalls bar.
- 2.15 In 1965 a further change of ownership resulted in the purchase of the Site by Brian Epstein, who ran the theatre as both a music venue and for plays. Significant acts played at the Saville Theatre in this period including Jimi Hendrix and The Beatles, but, apart from a notable moment of destruction during a Chuck Berry concert when the audience rushed the stage and damaged fixtures, fittings, and performance equipment, this phase of the Site's history appears to have left few physical signs.
- 2.16 Then, in 1970, a series of more major changes were implemented. The Theatre was converted to the ABC West End flagship cinema by William Ryder & Associates, with the single theatre auditorium split into two cinema theatres. A section illustrating the form of this conversion is included at Appendix A2.1, with further information provided within Appendix A4, *Additional Information on Interiors*.

- 2.17 These changes were hugely transformative internally, with the physical evidence of this clear in the corners of the theatre auditorium at the point of intersection between the brick external shell and the concrete frame from which the new cinema auditoriums are suspended. A full outline of the works undertaken to the building's exteriors are laid out pages 15 and 16 of the Heritage and Townscape Assessment (CD G4), and an assessment of the building's fabric on site indicates that in order to create the new single screen theatre, the original form of the theatre's auditorium was removed almost entirely. Cross-sectional overlays of the 1970s Ryder & Associates scheme with T.P. Bennett's demonstrate that rather than form this new space from the original theatre (as was frequently the case), the new cinema particularly required the removal of the Dress and Upper Circles and their bars; the removal of the stalls, and the creation of a new, lower seating rake, which cut into the former Stalls Bar and Salon (See Appendix A1.10); the removal of the auditorium ceiling and boxes; the removal of the proscenium; and the removal of the stage.
- 2.18 Following national listing in 1998, in 2001 the cinema was subdivided further to create four cinema auditoriums by Northern Building Design Associates Limited. This resulted in the further erosion of the building floorplan, which is now almost unrecognisable from its historic form, with the exception of those staircases that survived the 1970 phase of redevelopment. When moving through the building the sense of disorientation is striking, which is reflective of the fact that these alterations, while individually piecemeal, have served to entirely alter the internal form of the building.

3. LEGISLATION AND POLICY

Legislation

- 3.1 Where any development may have a direct or indirect effect on designated heritage assets, there is a legislative framework to ensure the proposals are considered with due regard for their impact on the historic environment.
- 3.2 Primary legislation under Sections 16(1) and 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 states that in considering whether to grant listed building consent and planning permission respectively for development which affects a listed building or its setting, the Local Planning Authority or Secretary of State, as relevant, 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.
- 3.3 Contrary to the reference within the Delegated Report for these applications, Section 72(1) of the Act, which concerns Conservation Areas, does not apply here; it applies only 'with respect to any buildings or land in a conservation area'. Given that the Site sits outside the Seven Dials and Denmark Street Conservation Areas, Section 72(1) does not apply in this instance; instead, the relevant policy with regards to Conservation Areas is that arising from the NPPF, referred to below.

Statutory Development Plan

- 3.4 The Statutory Development Plan is made up of the *London Plan* (Consolidated with Amendments, 2016), and Camden Council's Local Plan (2017).

London Plan Consolidated with Amendments

- 3.5 The current adopted London Plan (2016) incorporates the changes made in the Revised Early Minor Alterations to the London Plan (2013), Further Alterations to the London Plan (2014), and Minor Alterations to the London Plan (2015).
- 3.6 The current London Plan deals with heritage issues in *Chapter 7, London's Living Spaces and Places – Historic environment and landscapes*. This chapter contains the following relevant policies:
- Policy 7.4: Local Character;
 - Policy 7.6: Architecture;
 - Policy 7.8: Heritage Assets and Archaeology

Camden Local Plan – 2017

3.7 Camden’s Local Plan sets out the Council’s planning policies and replaces the Core Strategy and Development Policies planning documents (adopted in 2010). Policies relevant to heritage assets within the Camden Local Plan are as follows:

- Policy D1: Design;
- Policy D2: Heritage

The Draft New London Plan

3.8 Some weight can be given to the policy contained within the ‘Intend to Publish’ version of the emerging London Plan, published in December 2019. The new London Plan deals with heritage issues in Chapter 7 Heritage and Culture, covering policies HC1 – HC7. Policy HC1 (Heritage conservation and growth) is the most relevant policy in this case.

Other Material Considerations

National Planning Policy Framework (February 2019)

3.9 In July 2018, the government published the updated National Planning Policy Framework (‘NPPF’). This maintains the focus on the ‘golden thread’ of sustainable development that was established as the core of the previous, 2012, NPPF. This was subsequently updated in February 2019.

3.10 The NPPF addresses design issues within Section 12, ‘Achieving well-designed places’, with paragraph 127 being of particular relevance. More directly, Section 16 ‘Conserving and enhancing the historic environment’ provides relevant guidance for this case. In particular, paragraphs 189, and 192-197 (the latter group being the ‘fasciculus’ of policies held by caselaw to reflect the statutory duties outlined at 3.1-3.3 above) are of relevance here.

Planning Practice Guidance (‘PPG’) (Department for Communities and Local Government, last updated July 2019)

3.11 The guidance on Conserving and enhancing the historic environment in the PPG supports the NPPF, and is provided within the Section entitled ‘Historic Environment’. The sub-section on ‘Decision Making’ (particularly paragraphs 006-020) are of relevance here

Historic England Good Practice Advice in Planning Notes

3.12 Two particular pieces of guidance by Historic England are of relevance to a consideration of this application, as they provide a methodological approach for assessing the impact of schemes on heritage assets. The first of these, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-Taking in the Historic Environment* (GPA2) (Historic England,

March 2015), in particular sets out a 6 step process for assessing direct impacts on heritage assets, as follows:

1. Understand the significance of the affected assets;
2. Understand the impact of the proposal on that significance;
3. Avoid, minimise and mitigate impact in a way that meets the objectives of the NPPF;
4. Look for opportunities to better reveal or enhance significance;
5. Justify any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change;
6. Offset negative impacts on aspects of significance by enhancing other aspects through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets that are affected (Paragraph 6).

3.13 Meanwhile, *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets* (GPA3), (Historic England, second edition, December 2017) sets out a 5 step process for assessing indirect, setting impacts on heritage assets, as follows:

1. Identification of heritage assets which are likely to be affected by proposals.
2. Assessment of whether and what contribution the setting makes to the significance of a heritage asset.
3. Assessing the effects of proposed development on the setting of a heritage asset.
4. Maximising enhancement and reduction of harm on the setting of heritage assets.
5. The final decision about the acceptability of proposals.

3.14 Finally, *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment* (English Heritage, April 2008), while due to be superseded shortly, sets out Historic England's approach to the sustainable management of the historic environment, and in particular outlines 'values' that should be used to quantify and specify the significance of heritage assets.

Summary of Legislation, Policy and Guidance and their Application

3.15 It is clear that the active statutory duty under S66(1) of the 1990 Act has primacy here, with case law making clear that its application should be consistent with the approach outlined at paragraphs 192-197 of the NPPF. The emphasis is on avoiding harm to heritage assets (to 'conserve' special interest and significance), and a departure from such a position requires 'clear and convincing justification', through an exercise involving balancing any harm (appropriately weighted) against public benefits, including heritage benefits (NPPF paragraphs 195-197).

3.16 Recent Case Law sets out how the statutory duty, and NPPF, should be properly applied. Firstly, it has been held in the decisions of *City and Country Bramshill Ltd* and *SoS for HCLG vs Hart DC* and

Historic England [2019] EWHC 3437 (Admin) (hereafter '*Bramshill*') and *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin) ('*Safe Rottingdean*') that the same 'considerable weight' that must be given to harm to the significance of heritage assets under *Barnwell* (2012) (through discharging the statutory duties within the 1990 Act) has to be given to enhancements to that significance (*Safe Rottingdean*, para 87). Recent case law in "*Bramshill*" has also set out the correct application of the sequenced test across paragraphs 194-196. In summary, any identified harm should be considered to engage paragraph 194, stepping to the application of either paragraph 195 if substantial harm has been identified or 196 if less than substantial harm is identified¹.

- 3.17 Local Development Plan Policies add little to the legislative and policy tests above; the adopted London Plan and Camden Local Policies relevant to this application do not seek to add further tests or considerations in cases where harm might occur, but seek instead to reflect, and remain consistent with, the tests outlined under the Act and NPPF.
- 3.18 The below therefore seeks to assess the proposed development against this Legislative Framework by considering whether, and to what degree, harm might be considered to arise to the significance of heritage assets, and to also have regard to where enhancements to significance might arise. While I am not able to undertake the Planning Balance (or indeed, a full test under paragraphs 195-197 of the NPPF) by considering the full package of public benefits against any identified harm, I am able to balance enhancements to significance, as 'public benefits' against identified harms, and the following Section undertakes this assessment.
- 3.19 In order to undertake this assessment according to adopted and accepted methodologies, I will use the terminologies outlined in the NPPF Glossary and PPG (in relation to 'significance' and heritage 'values' in particular), and the stepped processes outlined within GPA2 and GPA3, both being based principally on establishing the affected assets, establishing their significance (including their settings), and then assessing the impact the proposals would have upon that established significance.

¹ It should be noted that this approach differs from the approach under the S66 Statutory Duty; here, Sir Duncan Ouseley held in *Safe Rottingdean* (paras 86-87), that a proper application of S66(1) requires an 'internal' consideration of harms and benefits, in relation to the special interest of listed buildings and their settings, before reaching a view as to whether the statutory duty is complied with or not.

4. ANALYSIS

Appeal Proposals

- 4.1 The proposals are explained in the Design and Access Statement associated with the application, and in the Proof of Evidence of James Dilley, of Jestico and Whiles, scheme architects. The scheme, under both The Planning Application and The LBC Application, sought,

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.

Camden Council Response

Pre-Application Process

- 4.2 The submitted scheme for the Site was brought forward following an extensive period of pre-application discussions with the London Borough of Camden, during which time the form of the building evolved considerably. This process is outlined in narrative terms within the Statement of Case, and it is not necessary to rehearse this process here.
- 4.3 One particular point that arises in relation to the pre-application and application process that is worthy of comment is the 'second opinion' in relation to heritage matters sought by the Council. This was sought on the basis of a joint brief determined by both the applicant team and the Council (CD G11). I provided a first draft of this, and it was then altered between myself and the Design and Conservation Officer then acting on the scheme. This 'second opinion' was produced by Dr Duncan Phillips, of Listed Buildings Surveys Ltd. His findings are summarised fairly at paragraph 2.51 of the Delegated Report (CD G15), while his report is included at CD G12. Dr Phillips ultimately concurred with Icenis's assessment of the significance of the listed former Saville Theatre, and with our assessment of the likely impact of the proposal on that significance.
- 4.4 It was, and is, my view, as joint author of the brief, that Dr Phillips' work did meet the brief's requirements, as it confirmed that:

- 4.4.1 The assessment provided of the Conservation Deficit was correctly undertaken, and showed no errors or inconsistencies;

4.4.2 That the proposed works did represent the necessary works for the repair, maintenance and reasonable refurbishment of the building;

4.4.3 That, in Dr Phillips' professional opinion, the costs did appear reasonable;

4.4.4 That there were no conflicts to be identified between the proposed works and the building's conservation;

4.4.5 That purely from a heritage point of view, the proposed project does not impact adversely on the significance of the historic interest in the building.

4.5 It is my view that the Council's concerns regarding the report's meeting of the Brief were predicated on the expectation of a different response. For example, the Council in their Delegated Report (para. 2.52) noted that,

For example, the review does not address the question of the conservation deficit directly, by identifying necessary works, simply stating "I have read and understood the Building Condition Report by Hallas & Co. and I would broadly agree with the comments about the condition of the building".

It is self-evident from a full and fair reading of the document that Dr Phillips' conclusion that the Conservation Deficit identified was necessarily correct, because he was in agreement regarding not just the condition of the building, but regarding the works identified to remedy this, and the costings of these. The absence of a proposed alternative, in this and other regards, does not indicate that Dr Phillips failed against the Brief, but rather that he saw no need to elaborate, given his agreement with the conclusions of the Documents he was asked to review.

4.6 Dr Duncan Phillips is an acknowledged expert in the field of heritage conservation. He is highly qualified in these matters, and his other roles, including as Chair of the RICS Building Conservation Steering Group, as Chair of the IHBC's South East region Committee, and as a guest and permanent academic lecturer reflect the fact that his work and approach are well-respected.

4.7 The London Borough of Camden did not, in their Delegated Report, or in other correspondence, provide a critique of Dr Phillips' response, or identify whether or where they felt that his conclusions were incorrect. Their only criticism appears to surround the way in which his work related to the Brief. Accordingly, to date, Dr Phillips' undoubtedly expert opinion stands as an unchallenged second opinion on the scheme's impact on the heritage asset.

Reasons for Refusal

4.8 The London Borough of Camden, as outlined above, refused the applications on 5 July 2019. The refusal for The Planning Application listed 14 reasons for refusal, while The LBC Application provided one Reason for Refusal. For the former, one Reason for Refusal related to Heritage matters, as follows (as identified above, a near identical version of this wording also appeared as the single Reason for Refusal for The LBC Application):

1. *The proposed rooftop extension, by reason of the proposed height, mass, detailed design and materials would compromise the form, architectural character and historic interest of the host listed building, and in combination with the change of its main use to a hotel, would result in less than substantial harm to the significance of the host listed building and nearby surrounding Seven Dials and Denmark Street Conservation Areas, contrary to policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.*

4.9 It should also be noted that Reason for Refusal 2 for this Application refers to Heritage policy as set out within Camden Council's Local Plan, stating that,

2. *The applicant has failed to demonstrate that the proposed development would ensure the provision of the maximum reasonable amount of replacement cultural or leisure facilities within the scheme contrary to Policy C3 (Cultural and leisure facilities) and Policy D2 (Heritage) of the Camden Local Plan 2017.*

4.10 It is therefore clear that the Reasons for Refusal are concerned, in heritage terms, with the following issues:

- 4.10.1 The impact of the proposed roof extension on the significance of the Grade II listed Saville Theatre, in terms of its 'height, bulk, scale and massing', and its impact on 'the form, architectural character and historic interest' of the building;
- 4.10.2 The impact of the proposed change of use on the significance of the former Saville Theatre;
- 4.10.3 The impact of the proposals on the significance of the Seven Dials and Denmark Street Conservation Areas, through the effect that the works would have on their setting.

Delegated Report

4.11 Further to this, the Committee Report serves to outline in more detail the reasons for the Council's decision to refuse the scheme. It is of particular relevance, in my view, that the Report:

- 4.11.1 In summarising the building's significance at paragraphs 2.8-2.14, while noting a range of contributors to the building's significance, is clear in identifying the Bayes Frieze as being of 'critical significance', and comparatively, considers the interiors to contribute 'little', and sees the rear and side facades as being of 'secondary significance';
- 4.11.2 Says little about the contribution of the Site to the significance of the neighbouring conservation areas, beyond noting the existence of intervisibility, and identifying a preponderance, along Shaftesbury Avenue, of 'large brick buildings with terracotta and stone detailing';
- 4.11.3 Notes the potential for an acceptable roof extension to the building being incorporated 'without significant harm' to the listed building;
- 4.11.4 Raises no concerns in relation to proposed works to the building's exterior;
- 4.11.5 Identifies specific concerns that the internal layout 'has little relationship with the historic interior as a result of the proposed new use, which is not ideal, however there are no fundamental objections with this aspect of the proposals';
- 4.11.6 Accepts that it has been adequately demonstrated that the building is in a poor condition, and accepts that there is no viable route to repair and refurbishment, but ultimately concludes that the heritage benefits of the proposals do not outweigh the harms it would generate.

Statement of Case

- 4.12 The Council's Statement of Case then reiterates many of the points made above. I would note the following points arising as being additional to the case laid out above:

- 4.12.1 It is suggested at 6.5 that the part of Reason for Refusal 1 related to the 'change of its [the Site's] main use to a hotel' leading to harm arises at least in part from 'the significant loss of leisure/cultural floorspace'. Indeed, at 6.10, it is argued that *'the existing cinema use does not simply make a neutral contribution to the building's significance, but rather, the importance of the building is significantly related to the main cultural use taking part on the principal floors of the building and the relationship with the historic interest of the host building and its location.'* This is identified as being a point related to the building's 'architectural hierarchy' (6.11), and the suggestion is made that the movement of the cinema from the space in the building it currently occupies to the basement would generate harm both to the host building, and to the setting of the neighbouring conservation areas.

- 4.12.2 It is argued that the proposed roof extension would ‘not relate to or respect the host building’, and overall fails to mitigate the harm that the Council suggest would arise in principle from developing above its extant parapet;
- 4.12.3 Reference is made at 6.10 to ‘cumulative change’ with the Council appearing to allege that the works proposed internally should be seen as generating harm ‘cumulatively’ with the incremental changes that have taken place historically. This point has not been made previously at any point in discussions with the authority.
- 4.12.4 It is suggested that harm arises to nearby conservation areas because the proposed rooftop extension to the building is ‘out of keeping and highly prominent’ in views of these areas, and would be ‘overbearing’ in its form, again causing harm;
- 4.12.5 It is suggested at 6.16 that the works of repair and restoration included within the application “could be carried out in isolation and are not dependent on the completion of the rest of the proposed development”. The implication is that these should therefore be ignored or given less weight as heritage benefits, despite them previously having been identified in the Officer’s Report as being ‘direct benefits and are supported’ (CD G15 para. 2.32);
- 4.12.6 Finally, it is identified that the development would lead to a level of harm at the ‘high end of less than substantial’ (6.19).

Summary of Camden’s Case

- 4.13 When seen in the round, it is clear that in addressing the Council’s concerns related to the proposed development and its impact on the historic environment, it is particular necessary to consider the following:
- 4.13.1 The degree of harm arising from the proposed development to the significance of the listed building from the roof extension (given that no particular harm appears to be identified in relation to internal works);
- 4.13.2 Whether the proposed development would lead to a situation where the ‘main use’ of the building was as a hotel, and whether this change, and a change in the quantum of floorspace dedicated purely to cultural/leisure uses would lead to a change in the building’s character which would, in turn, generate harm to significance;
- 4.13.3 Whether the proposed works would lead to harm through their physical alterations to the interior, including a consideration of whether the works generate ‘cumulative’ harm given historic incremental changes to the building’s interior;

- 4.13.4 The degree of harm arising from the proposed development to the significance of the two neighbouring Conservation Areas;
- 4.13.5 The necessity of the works, and the proposals' subsequent ability to justify their completion by virtue of being what was necessary to secure the future of the building;
- 4.13.6 Whether, further to this, the building was being proposed to be put to its 'optimum viable use' (and whether this is a determinative issue);
- 4.13.7 Whether public benefits (heritage or otherwise) exist to outweigh the heritage harm they identified.

Application Consultees

Historic England

- 4.14 Pre-Application discussions were sought between the applicant and Historic England; in May 2017, officers at Historic England were given sight of an early proposal of 9 storeys above parapet level. Concerns at that stage were raised that the scale of development might result in the original 'box' of the theatre being 'overwhelmed'. At that stage, officers noted that Historic England's 'starting point would be to retain the existing envelope in any new development' (Email from Michael Dunn, Historic England, 25 May 2017, CD F3).
- 4.15 Further to this, revisions were made to the scheme, and discussions held with the London Borough of Camden, not only around matters of pure design, but of viability, and of the quantum of development required to secure the future of the building. In an Email of 5 September 2017, it was confirmed by Michael Dunn, of Historic England, in relation to a reduced scheme of 3 storeys above parapet level that,

As discussed, I agree that the principal element of significance is the front elevation with the decorative frieze. There is some interest, however, in the overall 'cube' form of the Modernist building. Any large roof extension is likely, therefore, to cause some harm to the significance of the listed building.

I acknowledge that the revised proposals achieve a better balance between the retained base building and the new work.

The harm needs to be weighed against public benefits, and this is for Camden Council.

If you submit an application for LBC based on what you showed me, our advice to Camden will be to identify the harm caused, and urge them to weigh this against the public benefits in accordance with the NPPF. (CD F3)

- 4.16 Subsequently, the scheme underwent significant further revisions, reducing the height of the extension to two storeys with a part third above the parapet, and Historic England ultimately issued a formal consultation letter on 17 January 2018 authorising the London Borough of Camden to determine the application as they saw fit. While these standardised letters state that Historic England are, in issuing them, ‘not expressing a view on the merits of the proposals’, it is self-evident in this case that Historic England would, if any substantive concerns remained, have expressed these. Indeed, as their correspondence of September 2017 indicates, it was made clear that at that stage, and at that quantum of development, they were intent upon flagging the harm caused, and to ‘urge’ Camden to weigh this against the public benefits of the scheme. That this identification of harm did not take place in response to the application clearly indicates that the level of harm had reduced to a level where they no longer felt this flagging was necessary.

Twentieth Century Society

- 4.17 The Twentieth Century Society provided a formal response to the planning and listed building consent applications, dated 26 October 2018. It is clear from the response that the Society have reviewed the application documentation, but, necessarily, have not been able in practical terms to absorb all of the detail in relation to the justification for the proposed works. It is not clear from their letter, for example, that the Society have had the opportunity to engage with the viability discussions that necessarily have shaped the proposed development.
- 4.18 Their letter notes the ‘retention’ of the Shaftesbury Avenue façade without making reference to any of the enhancements proposed within the applications to this facade but raises some concerns in relation to the ‘entrance arched window’. The Society characterise the proposals as ‘large pane glass with metal mesh’ and identify their preference for a ‘window resembling the original glazing pattern’ based on historic photographs. This particular issue is discussed further below, but it should be noted that the proposed approach to the arched window is based on a contemporary reinterpretation of this feature. The arch originally had accommodation behind and so was not visible from inside, being a meshed piece of false fenestration, rather than a ‘window’ as such. The proposed scheme involves reinstating the framing details in an authentic way, but with clear glazing allowing the arch to be appreciated from the inside too. As such, I consider the proposals to provide the ‘restoration’ the Society are seeking, albeit altered to allow the interior of the proposed development to function better. In my view, the Twentieth Century Society’s comments on the proposed development should be viewed within this context.
- 4.19 Leading on from the above, the Society concludes that ‘some harm’ will arise to the building from the proposed roof extension but that this can be mitigated ‘if the exterior facades are treated carefully

and sympathetically'; in this instance, it is clear that the Society's proposed approach to mitigation was one of 'restoration' of particular lost features.

Rule 6 Parties

Theatres Trust

- 4.20 The Theatres Trust provided three separate responses to the applications (CD G14), on 15 October 2018, and 15 and 29 March 2019, and as a Rule 6 Party, have also provided a Statement of Case to the Inquiry. The Trust's principal focus is on the potential for an alternative theatre use for the Site, however. Whether the Trust is right or wrong in making this argument does not bear upon the question whether any impacts that *the appeal proposals* would cause to heritage are outweighed by the public benefits of *the appeal proposals*.
- 4.21 It is clear from the Statement of Case that the Trust broadly agree with my analysis that the building's significance relates almost entirely to its exterior; they note that 'areas of internal significance may remain', but having undertaken a very detailed assessment of the entire building, and having explored overlays of the current and historic layouts, it seems unlikely that any significant details have been missed. They request, associated with this, a Historic Building Recording condition; this has also been requested by Historic England, and the appellant is happy to accede to this request. The Trust, it should be noted, also welcome 'that external decorative features' will be restored as part of the application.
- 4.22 The Trust do agree with the Council that the main use of the building would be as a hotel and argue that this would cause harm to significance, and argue also that the building is inextricably linked to 'theatre and performance'; they argue that deviation from these uses is harmful in principle. Below, I address in full the impact of the proposals on the character of the building as a historic place of performance, but it is of note that the cinema use within the building will be retained, and that, in my view, the scheme seeks to reflect more directly the original, now lost, character of the building.
- 4.23 In their earlier letters, the Trust raised wider issues, particularly identifying 'substantial harm' as arising from the proposed development and identifying particular concerns with the design and mass of the building's proposed extension at roof level. These issues are not noted in the Statement of Case, however, and it is unclear whether the Trust are maintaining these concerns.
- 4.24 Further to their Statement of Case, The Theatres Trust were invited to be signatories of the Heritage Statement of Common Ground, but were not willing to sign the final version of the document, noting that they were 'largely in agreement with the text', but that there were some elements they were unwilling to agree to. These points seem to contradict their position as elucidated within the Statement of Common Ground, and they have made reference in their letter of 15 October 2020 (CD H11) to their view that:

- ‘The volume of the original theatre, including the volume of the flytower still exists’; and that,
- ‘Much of the stalls structure and potentially other areas may remain’, and therefore that ‘rather than “some elements” of structural support remaining we believe significant elements may remain’.

4.25 In full fairness to the Theatres Trust, they were not directly party to the extensive discussions that took place over Summer 2020 between the appellant and the Council in relation to the internal fabric, nor did they visit the Site as we did with the Council in July 2020. Therefore, there are elements that they consider to exist either in potential or in fact which it is clear do not. In particular, our analysis has shown, as the Inspector will see on the Site Visit, that the 1970s stalls rake is very different in its form and position to that of the original theatre, and clearly required removal of the original stalls structure. It is equally clear that at the very least almost all of the structure associated with the Dress Circle, Upper Circle and boxes has been removed, from an overlay of the original and later plans.

4.26 The Trust’s concern that the Heritage SoCG did not capture what they believed to be the factual existence of the fly tower and theatre volumes suggests, in my view, that the later theatre alterations took place within the original form of the original Bennett theatre, and that implies that this form could be reinstated. While it is clear that the space that the theatre occupied is still extant (in that the building still stands), as will be shown below, it is my view, having analysed the building and its alterations in detail, that the 1970s works were not a simple re-use and adaptation of the theatre volumes, but constituted an almost wholesale cutting back of the theatre to create two cinema screens. There is little alignment between the original theatre walls and those of the new cinema screens, and the upper screen cut through both the original roofline (thus severing the completeness of the original ‘volume’, and also resulted in the removal of the proscenium arch and beam. These alterations, and the later alterations, also ate considerably into the stage house. Clearly, the upper parts of the fly tower, with considerable insertions and alterations, do remain overall as ‘volumes’, but I would strongly argue that the original theatre volume remains only in the very broadest sense.

Covent Garden Community Association (CGCA)

4.27 The CGCA seeks to critique the approach that has been taken within the appellant’s Statement of Case to heritage matters through a tabulated ‘weighting’ of the various harms and benefits that may arise from the scheme, and looks to compare the appellant’s approach with their own assessment, and an assessment of a theoretical alternative theatre scheme. The tabulated approach is not supported in any guidance and is, regardless, hugely inconsistent and confused, and based on an entirely flawed reading, in my view, of the relative impacts of different works. It assumes that I have weighted all the works equally in my assessment; as will be seen, I have not. It also concludes that the SoC approach to balancing heritage harm and benefit is incorrect because such great weight should be given to the harm they argue would arise from the roof extension. This Proof will make clear my detailed assessment of the relative impact of different works to the listed building and make

clear that the CGCA's approach is fundamentally flawed. Additionally, as noted above, the comparison provided by the CGCA SoC to a theoretical alternative theatre scheme does not bear upon the weighing exercise required by NPPF 196.

Other Groups

4.28 The **Bloomsbury Conservation Area Advisory Committee** objected to the application, stating that 'the form, scale and particularly the materials of the proposed extra floors have nothing at all in common with their host building and appear totally incongruous. The theatre is a fine example of its type and is listed grade 2. As such the extension is completely unacceptable'. They conclude also that the development is 'detrimental to the character of the Conservation Area', although it is not stated which Area this refers to.

Summary of Responses

4.29 It is clear that these responses are frequently shaped by the extent to which the various respondents understood or accepted the need to find a viable and sustainable future use for this building, or their acceptance or understanding of the overall balance of heritage 'enhancements' and 'harms'. As will be shown below and is addressed in the evidence of Anna Snow, the interaction of these elements is essential to understanding the heritage case.

4.30 It is of note that, with the exception of the Theatres Trust's earlier letters, nobody has identified more than less than substantial harm as arising from their overall assessment of the scheme, and that only the Theatres Trust's earlier letters, and the CGCA have identified significant concerns in relation to the external appearance of the main theatre box. It is noted in this regard that the Twentieth Century Society have identified some concerns in relation to the front façade, but it would appear that these are predicated in part on a misunderstanding of the proposed approach.

4.31 Historic England, the London Borough of Camden's officers, The Theatres Trust, Listed Building Surveys (Dr Duncan Phillips), Donald Insall Associates, and Icen Projects have all reached very similar views on the significance of the listed building. These organisations, where they have assessed the proposed scheme have also reached broadly similar conclusions as to the impacts arising from this scheme.

4.32 An assessment of the approaches of the various consultees and bodies above makes it clear that the principal difference that arise in terms of overall conclusion, and the 'balancing' of harm and benefit, relates to the weight to be given to different aspects of the building's significance, and to the harms and benefits that would therefore arise. The assessment below will serve to indicate the extent to which some consultees have failed to have regard to the whole package of heritage benefits arising from the proposed development, have not properly considered the proposed development against its baseline condition, or have overweighted identified harm to heritage significance. Overall, however, the third party comments outlined above mirrored Camden's concerns regarding the impact

of the proposed roof extension, in particular, on the historic environment, and also noted concerns in relation to the proposed works to the existing building's exterior; these issues are addressed in the assessment below.

Assessment of Impact of Development upon Designated Heritage Assets

Methodology/ Approach to Assessment of Impact on Heritage Assets

4.33 I have outlined my methodological approach the assessment of the scheme's impact on heritage assets at 3.7-3.11 of this Proof of Evidence.

Assessment of Direct Impacts: 135-149 Shaftesbury Avenue (former Saville Theatre), Grade II listed

Assessment of Significance

4.34 The building has some **archaeological interest** in the evidence it provides of 'patterns of human activity'. In this instance, such interest relates predominantly to its use as a cultural and entertainment venue. The building was not in theatrical use for long (1930-1965), before spending 5 years under the ownership and operation of Brian Epstein as a musical venue. Since 1970, the building has been in use as a cinema, a use which brought the considerable degradation of the building's internal and external form. The cinema use of the building does not relate to a significant or notable period in cinematic history in the UK (for example, the 'Golden Age' of the 1930s), is a use that has dwindled gradually over time. In my view, this period of the building's history does not make a notable contribution to the significance of the building.

4.35 The building's **Architectural and Artistic Interest** lies in its external form, and most notably in the considerable Artistic Interest present in Gilbert Bayes' frieze, which runs largely across the front façade, with short side returns, and its associated decorative roundels. The wider architecture of the front façade also contributes strongly towards the building's overall significance; while it has experienced some degradation over time, most notably around the entrance arch and canopy, it is well designed and considered as a whole, and allows the relationship between Bennett, the architect, and Bayes, the sculptor, to be appreciated.

4.36 It is clear that the building once possessed very considerable architectural and artistic interest internally, not only in the form of TP Bennett's now lost, but once grand and highly decorative auditorium, but also the bar and foyer spaces, with their murals by AR Thomson. Indeed, it is clear from an assessment of the building's early history and development that the building was a collaborative effort, an overarching result of the combined work of TP Bennett and Bertie Crewe as architects (the latter likely to have provided a largely functional and operational role given his pre-eminence in this area). Despite its obviously overriding role, however, architecture served to a great extent to provide a framework and setting for the work of others in the design of the Saville Theatre, with the bar and foyer space's providing a setting for Thomson's murals, and the principal façade's

architecture being reasonably restrained, a framework in which Bayes' sculpture could be allowed to be appreciated.

4.37 A full assessment of the building's interior was undertaken as part of the application process, leading to the production of an internal significance plan and overlays of original and existing plans (these are included within Appendix A4 of this Proof, at A2). Our assessment was based on a full and detailed Site Visit on 5 January 2017, and following an earlier, similar visit by Council officers in December 2016, prior to my involvement in the project. The January 2017 site visit included going 'behind the scenes' where possible, including to the rear of Screen 4, and into other back of house areas. It led to an agreement, by August of that year, that 'very little original fabric remains within' (CD F2). It was acknowledged that some, fragmentary internal fabric remains, as was outlined within Section 6 of the Heritage, Townscape and Visual Impact Assessment (CD G4) including the significance plans, with annotations, given at 6.3. Subsequently, I have produced an 'Additional Information on Internal Fabric' document (Appendix A4), and, following a further detailed walkover of the site with the Council's witnesses and advocate, on 2 July 2020, a Statement of Common Ground on heritage matters has been produced.

4.38 Following these assessments, a number of elements are agreed between the appellant and Council to have been provably removed from the building, and to no longer exist, while a small number of internal features can be shown to exist. These are laid out at 1.7 and 1.8 respectively of the Heritage Statement of Common Ground. In addition, it is of note that it is clear from the process of preparing the SoCG that the Council believe the form of the original theatre to remain legible within the building. There are also some elements which the Council contest *may* exist, on the basis they cannot be proven to have been removed without the building being significantly dismantled or opened up. I understand these to be:

- The original ceiling to the Foyer: Although this space has seen considerable alteration, and a heavy, 1970s asbestos ceiling was viewed on site, the Council maintain that it is possible that fragments of this ceiling may remain above this;
- Structure, and possibly decoration, from the original auditorium: Particular reference has been made to the structural joists of the dress circle, which can be read in sectional plans to run just below ground level, between Screen 3 and the foyer.

4.39 It is my view, first and foremost, that it is highly unlikely that either the foyer ceiling, or any substantive remains of the auditorium remain buried by later alterations. My visits to the building, and detailed analysis of the plans and information related to programmes of redevelopment, convinces me that the 1970s scheme of conversion in particular was enormously intrusive, and was predicated on the wholesale removal of the original theatre; this was not a programme of conversion, as seen elsewhere, but a consideration that the Saville Theatre was not suitable in its original format for use

as a cinema, and required internal reconstruction. It is particularly clear that nothing substantive is likely to remain of the foyer ceiling, given that the plans indicate that little more than the stubs of the walling next to the entrance coincide with the original shape of this space. I find it difficult to conceive of an approach to the reconstruction of this space which would leave a plaster ceiling untouched, and hang a heavy asbestos cement ceiling below it.

4.40 Moreover, even were the elements the Council believes may be found exist below the surface of the building, these elements, combined with those that are known to exist, are so fragmentary that the auditorium, staging, foyer, and bars of the Saville Theatre can be shown to be lost. What remains are staircases and altered back of house rooms that in no way illustrate the quality of Bennett's design, and are typical, in my experience, of the types of utilitarian or back of house spaces that characterise theatres and 'super cinemas' of the 1930s. Everything about the interior that made the Saville Theatre special, has been lost, and those elements that remain do not provide any legibility as to the original theatre's form or operation. This is self-evident from a site visit, and from the Council's letters in the run-up to this Inquiry. Its incorrect assertion that the Stage might exist to the rear of Screen 1, or that the raised floor on the route into this screen may represent the front beam of the dress circle provide an indication of how it is possible to misread this building without a full, detailed set of overlays.

4.41 Accordingly, I am of the view that the building's interior is so heavily altered that while some fabric dating to Bennett and Crewe's work of the 1930s does survive structurally, it does not survive to an extent that allows it to contribute materially to the building's significance. While some historic fabric does survive (for example, utilitarian staircases, and some back of house offices and other rooms on the northwest side of the building), the Bennett/Crewe scheme, the principal form and decorative scheme from the theatre, has been lost. It is no longer possible to read or appreciate the historic auditorium or ancillary spaces, and that fabric that does remain is entirely typical to a building of this era. Therefore, while some fragmentary 1930s fabric does survive (and it is possible that further structural fabric may exist, concealed by the current cinema layout), it is clear that that fabric which remains does not contribute to the significance of the listed building as a whole.

4.42 Finally, the building's **historic interest** relates most strongly to the fact that it represents a theatre developed during a short-lived boom in theatre construction in the 1920s and 1930s, as well as to its relationship with well-known figures, in both design and operational terms. In particular, the building's short life as a musical venue saw performances from the Beatles, Jimi Hendrix, Chuck Berry and others.

4.43 This assessment of the building's significance against the NPPF and PPG Heritage Interests allows also a consideration of the hierarchy of the building's significance. In this, as in any case, different

elements of the asset's significance will contribute to its overall significance to different degrees. In my view, the 'key elements'² of the building's significance can be summarised as follows:

4.43.1 The Gilbert Bayes Frieze and Roundels (described within the building's list description as 'one of the largest and most important works of public sculpture of its age');

4.43.2 The wider principal façade, and its expression of the artistic and architectural collaboration between TP Bennett and Bayes';

4.43.3 The building's historic and archaeological interest as a place of entertainment, associated with both its theatrical phase, and its phase under the ownership of Brian Epstein, whereby it was used as a venue for musical performance.

4.44 The asset also derives some, secondary or tertiary significance from:

4.44.1 Its simpler rear and side facades, which while well-considered and proportioned, are clearly of less significance than the principal façade;

4.44.2 The reading of the four facades together as a 'theatre box', expressive of the building's historic theatre use, and encapsulating (with some alterations), Bennett's intended external architectural scheme for the building;

4.44.3 Connected to this, the roofline or silhouette of the building makes some, limited contribution to the appreciation of this 'theatre box', in architectural terms.

4.45 As outlined above, it is my view that the building's heavily altered interiors do not contribute materially towards the building's significance. While some features of the 1930s do remain, the absence of any appreciation of the location, form or circulation patterns associated with the auditorium, foyers and bars ensures that these simple, functional spaces are not illustrative either of the functioning of the building in its original form, and are clearly not related to the principal architectural or historic interest of the building. Highly fragmentary elements of fabric remain, and some structural elements may survive buried within the current cinema scheme. These do not, however, contribute to significance; the theatre form is not legible overall, and the decorative scheme of which Bennett was so proud is entirely lost. This is a point on which there is broad agreement, and I, the Theatres Trust (SoC 6.7), Donald Insall Associates in their assessment of the building of 2008, and Historic England (Pre-Application comments, CD F3), share this view. Finally, it is of note that in designating the building, Historic England made reference to the fact that 'nothing of the 1930s work remains on view'; they

² PPG 'Historic Environment', Paragraph: 018 Reference ID: 18a-018-20190723

could comprehensively conclude that no such fabric existed *at all*, but their assessment that the building met the criteria for listing was clearly undertaken on the basis of what could be seen. It is clear that the building was designated for its exterior and historic use, an approach which is entirely consistent with my assessment above, and that of other experts.

Impact of the Proposed Development upon Significance

4.46 This assessment requires a consideration of both the physical interventions into the building, and a wider consideration of the proposals' implications for the building's future conservation. I will address the physical intervention into the building's fabric first for clarity, looking first at the internal works, then to the facades, and finally at the works proposed above the parapet. I will then address the implications of the proposals for the building's active future use and conservation.

Interior

4.47 As is identified above at 4.34, it is my view that the internal fabric of the building does not contribute towards its significance. The proposals will result in the removal of the internal fabric of the building, including some fabric of the 1930s. As outlined above, however, the pure existence of this fabric does not mean that it contributes towards significance; its survival is incidental and does not provide any real understanding of the historic function or design quality of the original building. It is my view that these works of removal will not result in any harm to the significance of the listed building.

4.48 I do not agree, in these terms, with the Council's view that the works would result in cumulative harm to the building through further intervention into the building's interior. This implies, firstly, that some significance remains internally, which I do not agree is true, but it also implies that the proposed works would somehow therefore serve to further detach the building from its original form, functionality and character. Again, I do not agree. The proposed development has been designed with the intention of securing and enhancing understandings of its historic use, and works such as the introduction of art work based on the building's historic section will serve to enhance understanding of the building's historic internal planning.

4.49 The Council make much in their Statement of Case and Delegated Report of alleged harm to significance which arises from a reduction in cinema floorspace, and its relocation to the basement of the building. It is implied that the building derives significance from the presence and scale of the current cinema spaces (despite agreement that the works to enable the cinema to be introduced did lead to harm to the building's significance), and that in perceptual terms, the building will now be read less as a cinema or entertainment venue, and that this also would generate harm to the building's significance. In my view, this approach radically misunderstands the entire principle behind the design and layout of the building as proposed.

- 4.50 Sections of the building by TP Bennett show that as part of the process of achieving a theatre on this tight site required the placement of the stalls and stalls bar in the basement and sub-basement respectively; the stage itself was also below street level. The entrance sequence for many visitors required them to drop from the entrance foyer down into the basement to reach their seats. The narrow foyer, while decorated with AR Thomson's murals, and therefore a high-quality space, was squeezed behind the Dress Circle (but without providing access). Thus, perceptually, it is not inappropriate in my view to place the cinema spaces in the basement, as the principal arrival sequence would reflect that which was found in the building historically.
- 4.51 Additionally, care has been taken to ensure that the building's ground floor reads principally as an entertainment space, with the hotel use not given primacy. The presence of a large, sweeping stair to the cinema close to the main entrance (see PoE of James Dilley, page 99) and the use of ground floor space largely for bars and restaurants (in part ancillary to the cinema) serves to make the cinema, and leisure activity generally, central to the main ground floor space. It is not correct, in my view, to characterise the approach to the cinema as resulting in a 'pushing down' of the entertainment function, or to result in a reduction of its contribution to overall character. Instead, the visitor will access an area focused on leisure activities, and with the internal front wall etched with TP Bennett's section of the building.
- 4.52 In character terms, this space should be compared to the current foyer and cinema spaces. These spaces do not relate in a legible manner to the historic layout of the Saville Theatre, and do not have a character or appearance that reflects the building's original design or function. Instead, they read only as part of a typical, late twentieth century cinema. It is my view that while in purely theoretical terms, therefore, the proposals may result in changes to the quantum of floorspace utilised for 'cultural/leisure uses', this would not lead to any harm to the significance of the listed building, as the presence of late twentieth century cinema spaces does not contribute to the building's significance in a meaningful or appreciable way. Instead, the proposed development would re-establish what I would describe as a 'spirit of place', a sense of activity, life and usage, as well as a standard of design, that reflects the aspirations of AE Fournier and captures some of the excitement TP Bennett had about the qualities of his now lost auditorium and bar spaces. In these terms, the proposed development would clearly serve to enhance the building's character, its archaeological and historic interests.
- 4.53 Connected to this, it is my view that it is incorrect to characterise the 'main use' of the building, in historic character terms, as being as a hotel. As shown, care has been taken to ensure that the principal arrival spaces and sequence relate to leisure uses, with the hotel reception being an incidental, secondary element of the whole. Clearly, the upper spaces of the proposed development will be in hotel use, but this change would not cause harm to one's appreciation of the former Saville Theatre's significance, and historic functionality when compared to the current experience of the

building's interior, as having travelled to this point, one would be left in no doubt as to its former grandeur, or historic use and form.

- 4.54 Finally, the reconstruction of the building's interior will also serve to help secure the structural stability of the building, which has suffered significantly from the building's conversion to a cinema, with works of stabilisation incorporated into the internal design scheme.

External Facades

- 4.55 The external facades of the building clearly constitute the most significant element of the building, and it is self-evident from the building's list description that its designation was undertaken on the basis of its external qualities alone. In particular, the Shaftesbury Avenue elevation including the Gilbert Bayes' Frieze, roundels and other terracotta detailing, the most significant aspect of the asset as a whole, would be subject to a comprehensive programme of conservation and refurbishment. The Frieze, which requires careful conservation, would be conserved by sculpture specialists, whilst elsewhere on the façade, it is proposed to re-open the arch above the main entrance, and restore its decorative metal grille, while a new canopy, again reflecting the design of the original theatre canopy, and posterboxes, will be instated. This would result in the considerable enhancement of both its architectural qualities and its function as an entrance; together these works constitute the comprehensive conservation and restoration of the principal facade. It will also, by extension, result in the enhancement of the historic association between Bennett and Bayes (also a key element of the Site's significance).
- 4.56 To the side and rear, a limited number of openings are proposed, carefully considered on the basis of an understanding both of Bennett's original designs, and of the areas that have experienced the most considerable change. Thus, while larger ground floor openings are proposed, these are largely focused on areas that have seen alteration already, while some hotel rooms are provided with narrow windows, introduced into existing, recessed vertical slots in the rear façade. To the side facades, blank window openings have been used to provide new fenestration. Accordingly, the works will preserve the architectural qualities of these facades.
- 4.57 Overall, therefore, the proposed development ensures the enhancement of the external facades of the building, with particular emphasis placed on works to the principal, and most significant, façade, that to Shaftesbury Avenue. It is also of note that the proposed development has been explicitly designed to avoid intervention into the theatre box. The proposals would, explicitly by breaking above the building line and enabling light and other functions to be introduced above the 'theatre box', preserve the four elevations as a group and therefore the legibility of Bennett's design for the Savile Theatre.

Roof Extension

- 4.58 It is acknowledged that some harm would arise from the breaking above the parapet line of the main building to create a new hotel use. Bennett's design has a degree of integrity as a cube or 'box', which the introduction of a roof extension would interfere with to a limited extent. However, appreciations of the building's form clearly relate principally to the building's four facades, and the roofline, or rather the absence thereof, with the exception of the small external expression of the fly tower, makes only a limited contribution to the building's significance. It is my view that within this context the extension, being a clearly modern addition to the historic building, does not interfere in how the building is read or appreciated, beyond introducing visual development beyond the original 'box'.
- 4.59 The impact of the extension has been mitigated – particularly in key views – by the way in which the form has been shaped, for example in the cut out above the main entrance. The design has also been altered through the detailed design process and taking into account feedback at pre-application meetings, which has resulted both in the reduction in height of the proposed extension, and in setting it back from the main building line to Shaftesbury Avenue to further reduce its presence in views.
- 4.60 Indeed, the Verified Views provided in the Proof of James Dilley from page 71 onwards, illustrate the extent to which harm is avoided to the architectural integrity and quality of the existing building. Views 1-4 and 8, taken from locations agreed with LB Camden show that in relation to the front façade, the proposed extension is a relatively discrete feature, either invisible or barely visible in most views; indeed, the shape and width of Shaftesbury Avenue are such that one would need to be in the immediate vicinity of the building, and either on the opposite pavement, or looking along Mercer Street, for the extension to be appreciable. Well set back from the front façade, the extension allows the principal façade to be read as an isolated feature in the townscape; the extension essentially works with the neighbouring buildings to frame Bennett's façade composition, and does not draw the eye away from its qualities. Clearly contemporary, and secondary to the main façade, the extension's design mitigates, to a great extent, the limited harm that arises from a roof extension in this location.
- 4.61 It is recognised that the roof extension is more visible from the rear, where it can be viewed more readily in conjunction with the asset's secondary, less significant external facades. The extension is most readily visible from around the Phoenix Garden, as shown in views 6 and 7. In these views, the extension appears as a light, clearly contemporary addition to the building, set back from the parapet line in all directions, and designed so as not to draw the eye away from the robust, dense mass of the cinema building. Again, the design does much to mitigate the potential harmful impact of the proposed roof extension, particularly here in allowing Bennett's main 'box' to be read as a single, uninterrupted entity. Furthermore, the 'diaphanous' design, intended to reflect the Design Review Panel's reference to New Court for Rothschild Bank, can clearly be seen in the Verified Views to merge with the sky, further reducing its sense of mass and prominence.

4.62 I note that the Council's concerns related to the roof extension are linked to a great extent to the way in which the use of the building might generate wider visual effects, such as the visibility of internal 'clutter'. This issue is addressed in detail by James Dilley, in his Proof of Evidence at 6.7; Mr Dilley has great experience in the field of hotel design, and in his understanding of how hotel rooms are designed and operate. I would concur with his general point that hotel rooms tend to be less cluttered to look into than residential properties; there is clearly more control over the layout of these spaces, and given the likely quality of the views from these rooms to both the front and rear, I would agree that it is highly likely that the area around the windows would be left unimpeded. Additionally, as Mr Dilley points out, the reflective nature of the glazing, and the provision of fritting (as well as the fact that these windows will be significantly above eye level) will serve to ensure that visibility into the building is highly restricted regardless.

4.63 Overall, therefore, it is my view that the proposed roof extension, while causing a limited degree of harm, is significantly mitigated by its design, and particularly its materiality and overall form, which do much to: reduce its perceived overall scale and mass; prevent it from competing with, or interfering with appreciations of, the main cinema building; and to make it an attractive and contemporary secondary feature within the Site.

Summary of Physical Impacts

4.64 Overall, therefore, the proposed development would serve to preserve or enhance the most significant aspects of the asset, particularly the principal facades, and introduce a range of uses and spaces internally which would enhance the building's character as a former theatre whose internal form and original use has been lost. It is acknowledged that some harm would arise, in isolation, from the proposed rooftop development, but this clearly needs to be considered in context with the clear heritage benefits of the scheme.

Viability and Establishment of a new and future use

4.65 As I have outlined above, it is my view that the proposed development is consistent with the building's conservation. While the introduction of additional floors above the parapet level does generate some limited, mitigated harm, the scheme as a whole delivers significant heritage benefits.

4.66 I understand that evidence will be brought by other parties to suggest that other uses may be deliverable. I have seen no details to suggest what physical works these proposals may require, nor what consideration has been given to the cost of works of repair and conservation.

4.67 NPPF, paragraph 196, states that,

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. (my emphasis) (CD B1)

4.68 I am advised by Mr Katkowski QC that the correct legal interpretation of this passage in the NPPF is that it does not *require* the Appellant to demonstrate that the appeal proposals constitute the OVU of the listed building in order for it to be concluded that the public benefits of the appeal proposals outweigh any harm to heritage that they would cause. For the sake of clarity, the Appellant does **not** wish to maintain as part of its case the claim that one of the public benefits of the appeal proposals that the Appellant asks the inspector to weigh is that they constitute the OVU of the listed building – on reflection, this debate is a distraction from what should be a much simpler assessment of weighing the degree of harm to heritage that the appeal proposals would cause against the degree of public benefits that they would bring. Put simply, as the Appellant sees it, the public benefits of the appeal proposals outweigh the harm to heritage they would cause regardless of whether the appeal proposals do or do not constitute the OVU of the listed building.

Summary of Impact of the Proposed Development on the Grade II listed former Saville Theatre

4.69 In my view, the following positive impacts would arise as a result of the proposed development:

4.69.1 The introduction of a set of uses and spaces which, in terms of their character and activity, would serve to enhance appreciations of the building's historic use as a place of entertainment and leisure;

4.69.2 The introduction of a large internal mural based on TP Bennett's original section drawing, allowing the location and scale of the auditorium to be understood by visitors;

4.69.3 The repair of the Bayes Frieze, Roundels and other decorative stonework, which constitute the most significant aspect of the building;

4.69.4 The wider repair and reinvigoration of the external facades of the building, which along with the Bayes Frieze, contribute strongly towards the building's significance. These works of repair and restoration are largely focused on the most significant façade, that to Shaftesbury Avenue, and include the removal of the existing canopy above the main entrance, and the introduction of a new canopy based on that originally found on the building; the reintroduction of the arched, metal-detailed opening on the main façade; and the reintroduction of historic posterboxes;

4.69.5 The introduction of structural works to secure the building physically into the future, and address historic structural issues associated with its conversion to a cinema;

4.69.6 The introduction of a group of deliverable uses consistent with the asset's conservation which would secure the building in use into the future.

4.70 In my view, the following harmful impacts would arise as a result of the proposed development:

4.70.1 The introduction of built development above the parapet of the building; the roof form of the building, as it appears from the street, is a secondary element of significance, and any harm arising would be mitigated by the quality of the proposed design, its limited visibility in relation to the primary, Shaftesbury Avenue façade, and the manner in which it serves to preserve the unity and cohesion of the theatre 'box' formed by the main facades.

4.71 Additionally, amongst the works leading to a neutral affect on the building are the proposal to remove the building's internal fabric (notwithstanding it should be noted that this removal does allow some of the works that allow the building's significance to be better appreciated internally to take place); and the introduction of carefully placed new openings into the less significant external facades to St Giles Passage, Stacey Street and Little Compton Street.

4.72 Accordingly, I reach the view that the positive impacts of the proposal on the heritage asset, which are heavily focused on the key aspects of the building's significance, significantly outweigh the harms that arise. I undertake a full assessment of this position against the legislative and policy framework at the end of this Section of the Proof.

Assessment of Indirect Impacts: Denmark Street Conservation Area

Assessment of Significance

4.73 Denmark Street Conservation Area covers a relatively small area stretching from New Oxford Street in the north to New Compton Street in the south. It includes the Centre Point development; Denmark Street itself, St Giles Church, its courtyard and the cluster of historic buildings around it; and the Phoenix Garden. It is divided into three sub-areas, with the Site being directly adjacent to Sub-Area 2, which focuses on St Giles Church, its churchyard and the Phoenix Garden. This Sub-Area is characterised by a preponderance of open space, framed by St Giles and a collection of other buildings along the Conservation Area's edge, including Pendrell House, north of the Site.

Contribution of setting to this significance

4.74 Any urban conservation area of this type is likely to be surrounded by a wider townscape that is notable mainly for its exclusion from the Area, and in this case, it is particularly clear that the Council have sought to draw quite a tight boundary around the Area, and the cluster of interrelated developments that form the triangle of built development between New Oxford Street, Charing Cross Road, and Shaftesbury Avenue. The elements that make up the area are readily legible and

understandable, and the wider environment contributes to its significance by providing an urban form which contrasts with the Area itself, and acts as the space in which the Conservation Area is approached and departed from. Overall, therefore, it is my view that the Conservation Area predominantly draws its significance from its internal form, character and appearance, and the contribution of the Area's setting to this significance is limited.

- 4.75 This is particularly clear to the south of the Conservation Area. The Conservation Area Appraisal identifies New Compton Street as having a 'back of house' feel, and this is clearly the case; the way the Area's southern boundary is drawn means, necessarily, that the Area draws to a close one block shy of Shaftesbury Avenue, the major thoroughfare in the vicinity, and it's southern edge, therefore, is influenced by the rear of buildings that face out on to the Avenue. The open space of the Phoenix Garden is framed by buildings beyond the Conservation Area and facing on Shaftesbury Avenue, including 125 Shaftesbury Avenue, the Site and Shaftesbury House.
- 4.76 Historically, the southern part of the Conservation Area was screened off from views towards, and from, Shaftesbury Avenue, by the presence of terraced houses along the northern side of New Compton Street; St Giles Churchyard was historically, therefore, a well-framed and screened space. The Phoenix Garden was created on a surface car park that was created after the Second World War when these houses were cleared following bomb damage.
- 4.77 Therefore, while the Site is visible from within the Conservation Area, this relationship is a modern creation, and one that reflects recent changes to the townscape; the Saville Theatre was built in the context of a narrow, tightly defined New Compton Street. It is in this context that the design of the rear façade of the building should be understood. It was designed to be read within a tight, backstreet setting, with only very oblique views of the upper parts of the building. Accordingly, it is my view that the longer, direct views of the building that can be achieved now across the Phoenix Garden (see Appendix A1.3) are a relatively recent creation and that therefore, in significance terms, these make a lesser contribution to the Conservation Area. Moreover, the Site forms part of a string of buildings that provide today, an 'edge condition' to the Area characterised by a 'back of house' feel, increased, in this instance, by the extent to which the Site was not designed to be seen directly. Accordingly, it is my view that the Site does not provide a strong contribution to the significance, character and appearance of the Area, in that it predominantly provides a contrasting 'edge condition' in its architectural form and orientation.
- 4.78 Clearly, however, the visibility of the building from Sub-Area B of the Conservation Area does provide it with something of a contribution to the character of this space which requires consideration in largely aesthetic and spatial terms. As indicated above, spatially, It forms part of the transition on to Shaftesbury Avenue and the environment beyond. Its feel, aesthetically, is largely utilitarian, albeit with some reasonable detailing, such as to the parapet, and the whole clearly reads as a rear, rather than a principal, façade. It is additionally notable that the building is considerably lower than its

surroundings, with Shaftesbury House and 125 Shaftesbury Avenue being significantly taller than the Site.

- 4.79 It is therefore my view that the principal contribution of the Site to the significance of the Conservation Area lies in the general contribution it makes to the enclosure of the Phoenix Garden. It does make a greater aesthetic contribution than some of its neighbours, by virtue of the limited detail and proportions of its rear façade, but the direct visual relationship is a recent creation, and not one that was ever intended. Accordingly, the value of this interrelationship is reduced, as it is by its specific exclusion from the Conservation Area.

Impact of the Proposed Development upon Significance

- 4.80 The proposed development will result, in views from the Conservation Area, in the introduction of an additional built form above the existing parapet line of the Site, in addition to some, relatively minor, visual changes to the appearance of the rear façade. Additionally, the creation of a new rear entrance to the building will introduce more activity to the rear façade.
- 4.81 In terms of the character of the Area, there will be no overall change to the ‘back of house’ feel of the Site; it will continue to be read as the rear of a building with a function characterised by the presence of an entertainment venue, facing onto Shaftesbury Avenue rather than New Compton Street. However, there will, at certain times of the day, be more activity, and an increased sense of surveillance. In my view, this has the potential to increase footfall and activity along New Compton Street, in a manner which would add to the feeling of lively, but distinctly secondary, human interaction with much of the Conservation Area.
- 4.82 The proposed development would not result in any loss of physical detail which is appreciable from the Conservation Area, and while some new fenestration would be created within the rear façade, this would be introduced within the existing framework of the rear façade’s design, and would not alter the appreciation of this façade as a secondary, but well considered, façade of the late 1920s and early 1930s.
- 4.83 The introduction of built form above the parapet would create a new, visible form to the vicinity, but it should not be assumed that the impact that this would have on the significance of the Site’s listed building would result in any similar impact in relation to the Conservation Area. The Conservation Area is a wholly different heritage asset, with its own particular significance, and given it sits beyond the Site, any impact arising from the development would also necessarily be secondary. It is therefore predominantly important to note, in my view, that the Site is both lower in height than its neighbours, and does not possess a parapet line that in its current form contributes in a notable way to the significance of the Conservation Area. In my view the introduction of a new development above the parapet line would not detract from any limited contribution that the existing building makes to the significance of the Conservation Area in aesthetic terms, while spatially, the proposed roof extension

would sit comfortably within the wider environment, sitting comfortably between its neighbours, and appearing as light, and well scaled.

- 4.84 I disagree with the Council that the proposed extension would be ‘visually oppressive’. As noted above, even with its extension, the building overall would be lower than its neighbours, while the extension’s materiality and massing have been designed to allow it to be as light and diaphanous a feature as possible; its reflective nature would allow it to almost dissolve against the backdrop of the sky in views from within the Conservation Area. When considered in its context, it is clearly not possible for a scheme of this size and materiality to ‘dominate’ its surroundings and cause harm to the significance of the Conservation Area. I also disagree with the Council’s suggestion that the extension would cause harm through being ‘out of keeping’ with the character of the surroundings. Such an assessment relies on ignoring the modern buildings that sit in this vicinity, and form a clear part of the character of the Area’s setting. In my view the proposed development would sit comfortably within its surroundings, varied and urban as they are in form and scale, and would not generate a harmful impact on the significance of the Conservation Area.

Assessment of Indirect Impacts: Seven Dials Conservation Area

Assessment of Significance

- 4.85 The Seven Dials Conservation Area is a long, thin Conservation Area, with a ‘J’ shape, formed around the well-formed development around Seven Dials, laid out in the 1690s, and stretching east along Betterton Street, Machin Street, Parker Street and Great Queen Street.
- 4.86 The Site is closest to Sub-Area 1 of the Conservation Area, which comprises the well formed Seven Dials area, a clearly-defined square, split by seven radiating streets that meet at Seven Dials itself. Seven Dials is of significance predominantly for the way in which it continues to capture Thomas Neale’s revolutionary plan of the late seventeenth century for the area’s planning. The only speculative plan of this time not to use the standard grid-plan format, Seven Dials remains legible as an early, inventive piece of urban planning, that continues to create a high-quality, attractive environment. While it has experienced several periods of redevelopment, resulting in the loss or re-fronting of many of its original terraced houses (although some survive), it has a high concentration of buildings of the seventeenth to the nineteenth centuries. These capture the gradual evolution of this area from a predominantly residential district to one dominated by industry, including brewing. Thus, while Monmouth Street retains something of its residential flavour, Shelton Street and Short’s Garden are clearly more industrial in character, feeling more canyoned as a result of the preponderance of tall, sheer, nineteenth century warehouses.

Contribution of setting to this significance

- 4.87 The area of Thomas Neale’s spoked development is well formed and defined, legible both on historic maps and within the townscape itself. The Conservation Area’s extension to the east also takes in

an area with a constituency of form and character to Sub-Area 1, giving the Conservation Area as a whole a well-defined form. As with the Denmark Street Conservation Area, its setting is defined to the north by its contrast with Shaftesbury Avenue, which forms a distinct and legible edge to the Conservation Area. Shaftesbury Avenue is different spatially, historically, and in character terms from Neale's Seven Dials. The same can be said of the dense industrial blocks between Mercer Street, Langley Street and Neale Street, and the heavily redeveloped urban block north of Short's Gardens and east of Endell Street. Accordingly, the contribution of the urban form beyond the Conservation Area to its setting is limited predominantly to the provision of contrast, and a definition of the Area's clearly defined boundaries.

- 4.88 In the case of Shaftesbury Avenue in particular, the boundary is clear, and strongly defined; while some buildings on the south side of the Avenue are included within the Area, they relate more clearly to Shaftesbury Avenue and its character than that of Seven Dials. Beyond these buildings, which are typical of the tall, more recent mixed commercial and residential buildings that flank the Avenue, this part of the Area's setting provides oblique views of the edge of the Area and is largely screened from further into the Conservation Area. Where views out of the Conservation Area towards the Avenue do exist, a sense of contrast reinforcing internal consistency of character again is the defining feature. Views out of the Area along Monmouth Street are terminated by views of Central St Giles, a large, brightly coloured modern development, for example, and while the Site is visible along Mercer Street, so too is Shaftesbury House, and in particular its particularly visible corner feature. In these views, too, it is possible to appreciate visually and audibly, the difference in character between Shaftesbury Avenue and the rest of the Conservation Area, by virtue of the higher traffic levels along its length.
- 4.89 The Site's contribution to the significance of the Conservation Area can be characterised as limited to the way in which it forms part of the wider setting of the Conservation Area, itself a secondary element of the Conservation Area's significance. It is visible from the Conservation Area both directly and obliquely along Shaftesbury Avenue, where it forms part of a townscape which, in addition to being heavily modernised, clearly relates to the busy, commercial character of the Avenue (See Appendices A1.1 and A1.2). It is smaller than its neighbours, and better detailed, but nonetheless clearly forms part of the space beyond the Area, and makes no notable individual contribution to the Area's significance.
- 4.90 In views along Mercer Street (see A1.4 and A1.5 of this Proof), the building similarly acts as a backdrop, a building beyond the tighter character of the Conservation Area. It should be noted that the visibility of the Site in views along Mercer Street changes depending on where one stands; the visualisation provided with the application (CD G5) is a 'worst case' longer view, based on standing on the eastern side of the road, where the Site is most readily visible. From the opposite pavement, the building almost entirely disappears, and the eye is clearly drawn more strongly to Shaftesbury House's corner feature.

Impact of the Proposed Development upon Significance

- 4.91 The proposed development would result in the introduction of a new piece of built form, visible from the edge of the Conservation Area in the highly urbanised and varied environment of Shaftesbury Avenue, and visible, just barely, in longer views along Mercer Street, and from the edge of the Conservation Area, on Shaftesbury Avenue.
- 4.92 The development would, in views out of the Conservation Area along Mercer Street, be visible only from one side of the street in any material way, and would not alter the sense that one has of this point of passing towards the edge of one environment, and one to another. The eye would continue to be drawn towards the main bulk of the existing cinema building, and the tower of Shaftesbury House.
- 4.93 The façade would be repaired, resulting in an enhancement to the building’s aesthetic appearance, and it is this, being at ground level and immediately above, which would draw the eye of the viewer from the edge of the Conservation Area in Shaftesbury Avenue. Visualisations included in the submission documentation indicate the extent to which the roof extension would fail to draw the eye in longer views along the Avenue, where the shape of the street and the form of neighbouring buildings would screen it from view, or act as significantly more eye-catching features than the proposed extension.
- 4.94 I do not agree with the Council that this Conservation Area, the roof extension, being well set back from the façade, and designed to be a light, secondary element of the building, can be appropriately characterised as being either ‘visually oppressive’, or as being out of character with its surroundings. The Verified Views clearly indicate that these arguments are not sustainable.
- 4.95 Overall, the development would sit comfortably within its surroundings, relating to the urbanised, entertainment and commerce focused environment of Shaftesbury Avenue, creating neither undue scale, nor unusual, overbearing or distracting architectural form. Instead, the Site would continue to act as part of a wider mesh of immediate built development beyond the Conservation Area, and would not impact upon the significance of what is a well-defined and self-contained Area, or appreciations of that significance.

Assessment against Legislative Framework and Reason for Refusal

- 4.96 Looking first to statute, while I therefore acknowledge that a degree of harm to the significance of the listed former Saville Theatre would result, when seen in isolation, from the introduction of a new extension above its parapet line, it is my view that a large quantum of heritage benefits would also arise which would clearly outweigh these harms. In terms of the statutory duty under Sections 16(1) and 66(1) of the 1990 Act, I therefore conclude that a grant of consent for the Appeal Scheme would allow the statutory duty to be discharged. Given my finding that the benefits to special interest clearly

outweigh the harms, I would conclude that the scheme serves to enhance the listed building; in line with the *Safe Rottingdean* judgement, I conclude that considerable importance and weight should be given to this enhancement, and that this should be considered appropriately within the wider planning balance.

- 4.97 In terms of the NPPF, I have found that one aspect of the work would lead, in isolation, to the generation of what is clearly less than substantial harm. Following the approach in *Bramshill*, I conclude therefore that the paragraph 196 test is engaged. While I do not undertake the Planning Balance here, I am able to consider the heritage benefits (as public benefits), and weigh these against the identified heritage harms. In my view, it is clear that the heritage benefits of the scheme alone, including both the physical works to the building, and the securing of a use for the asset which is consistent with its conservation, outweigh the identified harm. In my view, therefore, without considering wider public benefits, the paragraph 196 test is met.
- 4.98 It is also my view that no harm will arise to the heritage significance of either the Denmark Street or Seven Dials Conservation Areas.

5. SUMMARY AND CONCLUSIONS

5.1 I have, within this Proof of Evidence, laid out the principal heritage concerns raised by the London Borough of Camden, in relation to applications 2017/7051/P and 2018/0037/L, and included within Reason for Refusal 1 and 2 of the Council's decision on the former, and Reason for Refusal 1 of its decision on the latter.

5.2 In 135-149 Shaftesbury Avenue, originally constructed as a theatre, and subsequently converted to a multi-screen cinema, is listed at Grade II, and is therefore recognised to be a designated heritage asset of national importance. This status, however, must be understood within the context of its listing date (1998), and its condition at that point, following the almost total removal of its 1930s interiors. In the view of the appellant, the key elements of the building's significance are as follows:

5.2.1 The building's façade to Shaftesbury Avenue, survives, with alterations, from T.P. Bennett's original scheme, and remains representative of the building's original function, and architectural quality (Architectural Interest);

5.2.2 In particular, the Gilbert Bayes frieze and roundels are of a particularly high level of Artistic Interest, being a well-considered, composed, and utilised example of art as architectural detail, designed by a well-known figure (Artistic Interest);

5.2.3 Although the building's interiors have been lost, the building does possess a 'spirit of place' associated with its use, into the 1970s, as a venue not just for theatre, but later for musical performance. The building's history of performance, and the liveliness and activity associated with these uses contributes to the building's historic character as a place of performance and entertainment (Historic Interest);

5.2.4 The solidity of the building's architectural form, in terms of its four facades, allows the building's historic use to remain legible (Architectural and Historic Interest).

5.3 Additionally, the following elements of the building make a contribution to its significance, but do not form key elements of that significance:

5.3.1 Individually, the three facades to New Compton Street, Stacey Street and St Giles Passage, being significantly simpler and more utilitarian in their form, but still representing a remaining, if altered, element of the building's architectural design (Architectural Interest);

- 5.3.2 The roofline of the building, and its completion with a solid parapet line to Shaftesbury Avenue, and small flytower to the rear, makes a limited contribution towards the clarity and cleanness of its architectural form. (Architectural Interest).
- 5.4 In my view, the interior spaces of the 1930s that survived the later cinema conversions, do not contribute materially towards the building's significance. Similarly, it is my view that its later use as a cinema does not make a contribution towards the building's significance.
- 5.5 This Proof of Evidence has, following this assessment of significance, considered how the proposed development would impact upon that significance. Having considered the scheme in the round, I conclude that the following positive impacts would arise as a result of the proposed development:
- 5.5.1 The introduction of a set of uses and spaces which, in terms of their character and activity, would serve to enhance appreciations of the building's historic use as a place of entertainment and leisure;
- 5.5.2 The introduction of a large internal mural based on TP Bennett's original section drawing, allowing the location and scale of the auditorium to be understood by visitors;
- 5.5.3 The repair of the Bayes Frieze, Roundels and other decorative stonework, which constitute the most significant aspect of the building;
- 5.5.4 The wider repair and reinvigoration of the external facades of the building, which along with the Bayes Frieze, contribute strongly towards the building's significance. These works of repair and restoration are largely focused on the most significant façade, that to Shaftesbury Avenue, and include the removal of the existing canopy above the main entrance, and the introduction of a new canopy based on that originally found on the building; the reintroduction of the arched, metal-detailed opening on the main façade; and the reintroduction of historic posterboxes;
- 5.5.5 The introduction of structural works to secure the building physically into the future, and address historic structural issues associated with its conversion to a cinema;
- 5.5.6 The introduction of a group of deliverable uses consistent with the asset's conservation which would secure the building in use into the future.
- 5.6 In my view, the following harmful impacts would arise as a result of the proposed development:
- 5.6.1 The introduction of built development above the parapet of the building; the roof form of the building, as it appears from the street, is a secondary element of significance, and

any harm arising would be mitigated by the quality of the proposed design, its limited visibility in relation to the primary, Shaftesbury Avenue façade, and the manner in which it serves to preserve the unity and cohesion of the theatre 'box' formed by the main facades.

- 5.7 Additionally, amongst the works leading to a neutral effect on the building are the proposal to remove the building's internal fabric (notwithstanding it should be noted that this removal does allow some of the works that allow the building's significance to be better appreciated internally to take place); and the introduction of carefully placed new openings into the less significant external facades to St Giles Passage, Stacey Street and Little Compton Street.
- 5.8 It is my view, additionally, that the significance of the Denmark Street and Seven Dials Conservation Areas will be preserved by the proposed development.
- 5.9 It is my view therefore that when considered against the statutory duty under Sections 16(1) and 66(1) of the 1990 Act, the proposed development would serve to enhance the special architectural and historic interest of the Grade II listed former Saville Theatre particularly as many of the beneficial effects are associated with key elements of the building's significance. This enhancement should, following the judgment of *Safe Rottingdean*, be granted 'considerable importance and weight' in the planning balance. This balancing exercise also ensures that in my view, even without considering the wider public benefits of the scheme, the test under paragraph 196 of the NPPF, whilst engaged by the fact that some harm would arise in isolation, is also met, and there is no conflict with any policy within the statutory development plan.
- 5.10 Overall, it is my view that the proposed development would accordingly be entirely consistent with the statutory duties under Sections 16(1) and 66(1) of the 1990 Planning (Listed Buildings and Conservation Areas) Act, and consistent with the Statutory Development Plan and other material considerations. As a result there are, in my view, not only no heritage reasons why consent should be withheld, on the contrary, given the considerable importance and weight to be given to the overall enhancements to significance outlined above, there are compelling reasons why consent should be granted.