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Proof of Evidence of Anna Snow

Odeon Cinema, 135-149 Shaftesbury Ave, London
WC2H 8AH
Draft V4

Iceni Projects Limited on behalf of Capital Start Ltd

October 2020

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ICENI PROJECTS LIMITED
ON BEHALF OF CAPITAL
START LTD

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LONDON WC2H 8AH

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1. WITNESS NAME AND QUALIFICATIONS

- 1.1 My name is Anna-Marie Snow and I am a Director of the Icen Planning team at Icen Projects. I am instructed by Capital Start Limited (The Appellant) in respect of the proposed development at 135-149 Shaftesbury Avenue, London WC2H 8AH.
- 1.2 Icen Projects is a significant real estate consultancy, with a central planning focus, and teams specialising in areas including planning, heritage, transport planning, sustainability, design, and project delivery and viability. The firm is based in London, with separate offices in Glasgow and Manchester. The Icen Planning team provide town planning consultancy advice to a range of private and public-sector organisations, advising on all aspects of planning policy and practice.
- 1.3 I am a chartered member of the Royal Town Planning Institute. I hold a Bachelor of Arts in Geography from the University of Wales and a Master of Philosophy in Environmental Planning and Development from the University of Reading. I have 18 years' experience of working in both the public and the private sector in London.

Experience Statement

- 1.4 I have been providing advice to Capital Start Ltd in relation to the proposed development since my initial appointment in January 2017.
- 1.5 I have significant experience working on redevelopment schemes within London and have led on numerous developments across the residential, commercial and hospitality sectors. I also have direct experience on developments within the London Borough of Camden (LBC), including a number of LBC's own developments. Some examples of projects include:
- 1.6 St Giles Circus including the site of 138-148 (even) Charing Cross Road 4, 6, 7, 9, 10, 20-28 (inc) Denmark Street 1-6 (inc) 16-23 (inc) Denmark Place 52-59 (inc) St.Giles High Street, 4 Flitcroft Street and 1 Book Mews, London WC2: Secured a series of planning permissions, listed building consents and advertisement consents for the redevelopment of St Giles Circus to provide a mixed use development comprising a 2000 capacity basement venue and associated feeder venues, residential development (including affordable

housing), restaurants, retail and office floorspace and 1912 sqm of LED screens within a new 'urban gallery'.

- 1.7 Central Somerstown: Secured planning consent for the London Borough of Camden to deliver the Central Somerstown Masterplan as part of Camden's Community Investment Programme. The development is currently under construction and will deliver a residential tower in addition to 6 buildings ranging from 3 to 9 storeys in height to provide new residential, community play, nursery and community hall facilities and ground floor commercial floorspace alongside the redevelopment of the Edith Neville Primary School with a new 1-2 storey building. The development also provides improved public open space, a community garden and public realm improvements.
- 1.8 Highgate Newtown Community Centre: Secured planning consent for Camden Council to secure a replacement fit for purpose community centre and public realm improvements funded through the development of 35 residential units for sale. The scheme forms part of Camden's Council's Community Investment Programme.
- 1.9 Bupa House: Secured planning permission for a co-working development at the former Bupa headquarters.
- 1.10 I have a good understanding of the London Borough of Camden (LBC), the Council's planning policy and its application.
- 1.11 I am instructed by the Appellant to provide evidence in respect of Town Planning matters. The Appellant has also appointed expert witnesses in respect of heritage, design and viability.
- 1.12 I have visited the site on numerous occasions. I have a comprehensive understanding of the site and its surroundings. In addition I have a full understanding of the relevant national and local planning policy framework, as well as the circumstances affecting the determination of the appeal proposals.

Scope of Evidence

- 1.13 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'.

- 1.14 The evidence which I have prepared and provide for appeal references APP/X5210/Y/19/3243782 and APP/X5210/W/19/3243781 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.
- 1.15 My evidence will address the general planning issues raised by the Appeal and is structured as follows:
- 1.16 Section 2: Background to the Appeal,
- 1.17 Section 3: Appeal Site and Surroundings; ;
- 1.18 Section 4: Key Planning Policies;
- 1.19 Section 5: Why Planning Permission should be granted;;
- 1.20 Section 6: Addressing Rule Six Representations; and
- 1.21 Section 7: My summary and conclusions.
- 1.22 My evidence will also refer to the technical work prepared in relation to design, heritage and viability that was either submitted as part of the planning application or has been prepared in support of this Appeal. I refer where necessary to proofs of evidence in respect of Architecture (J Dilley), Viability (D van der Lande) and Heritage (L Handcock) and additional supporting studies relating to ecology and sunlight, daylight and overshadowing and Servicing Management Plan.

2. BACKGROUND TO THE APPEAL

2.1 A detailed description of the proposed development, the Appeal site and the local context is set out within the Appellant's Statement of Case and will not be repeated here. This section of my Evidence provides specific background to the proposals, in particular the unique nature of the Appellant, as relevant to my later analysis in relation to the appeal.

The Appellant

2.2 Capitalstart Limited is a wholly owned subsidiary of Rossmoregate London Limited, the parent company of Thai Square Hotels Limited and Catering UK Limited (collectively known as the "Group"), which owns and runs:

2.3 A) the chain of 13 Thai Square restaurants;

2.4 B) the Thai Square Spa; and

2.5 C) the IHG Indigo Tower Hill Hotel.

2.6 The Group is established and has been operating in the UK for over 20 years, with the first restaurants opening in 1996. The companies operate profitably from mainly freehold premises within the UK, giving a strong balance sheet to the operational businesses.

2.7 The Group's auditors have commented on the current operational business profit from published accounts and the balance sheet strength of the businesses and confirm that the Group holds fixed assets of £87m, and made a profit of £3.5m before tax in 2018. Shareholders funds are £44m.

2.8 A number of the premises owned by the Group are listed, and many were restored and enhanced as part of their refurbishment for their operational uses. Capitalstart and its sister companies have the experience as custodians of heritage and listed assets to sympathetically restore and maintain these buildings over the long term.

2.9 Examples of listed buildings the Group own include:

- 2.10 1. 17-19 Cockspur Street (Grade II) – The 1960’s ground floor retail frontage was totally removed and a new Portland stone façade was designed and constructed with the agreement of Historic England and Westminster City Council. Subsequently the upper floor offices were totally refurbished with the addition of another floor and the reinstatement of the old Canadian Railways wood panelled offices;
- 2.11 2. 2 Park Square West (Grade 1), part of the Crown Estate, comprehensively restored and refurbished.
- 2.12 3. Tudor Tavern, St Albans (Grade II) – refurbished and reinstated into its original style whilst sympathetically incorporating the elements required for safety and modern living;
- 2.13 4. Wig and Pen (Grade II) – the only building on Strand to survive the Great Fire of London, converted into a single ground/basement restaurant with the upper parts being changed to an HMO whilst retaining all the original features including the 300 year old floating staircase. This property is currently undergoing further repair following a bus crash in 2018.
- 2.14 This history of involvement with listed buildings demonstrates that Capitalstart has the depth of understanding and skills required to take on the responsibility of the Grade 2 listed 135-149 Shaftesbury Avenue and has demonstrated through its long term stewardship and continued investment in the necessary corporate skills to maintain the building going forward. The strength of the operational businesses that will occupy the building ensures that there is sufficient financial strength to enable funding of the proposed development, restoration and financial capacity to manage the future maintenance of the listed building.
- 2.15 A full statement from Haim Danous, the managing director of Capital Start Limited, is provided at **Appendix 2**.

The Appeal Scheme

- 2.16 The appeal scheme seeks planning permission and listed building consent for the comprehensive refurbishment of the existing Grade II listed building and the provision of a new two storey roof extension and new basement level to provide a 94 bed hotel (Class C1), replacement four-screen cinema (Class D2 – *from 1/9/20 sui generis*) spa (Sui Generis), and restaurant and

bar floorspace (Class A3/A4 - *from 1/9/20 Class E / sui generis*), along with public realm works and highways improvements.

- 2.17 Specifically the proposals comprise:
- 2.18 The demolition of existing internal structures within the building and the retention of the existing façade and the excavation of one new basement level;
- 2.19 The construction of a new ten storey building comprising three basement levels, five levels behind the retained façades of the building and a two level roof extension;
- 2.20 The provision of a new 94-bedroom hotel (Class C1) at part ground and first to sixth floors;
- 2.21 The provision of a new four-screen cinema (Class D2 – *from 1/9/20 sui generis*) at basement levels one and two;
- 2.22 The provision of a restaurant/bar (Class A3/A4 - *from 1/9/20 Class E / sui generis*) and associated flexible pop up space and hotel reception at ground floor level;
- 2.23 The provision of a spa (*sui generis*) at basement level three;
- 2.24 The provision of a bar (Class A4 – *from 1/9/20 sui generis*) and associated terrace at roof top level;
- 2.25 Highways and public realm improvements including relocated parking bays and loading zone on New Compton Street and a new on-footway layby on Shaftesbury Avenue permitting all servicing and deliveries to occur without impeding traffic and allowing a wider footpath for pedestrians; and
- 2.26 The provision of separate cycle parking areas for staff (12 spaces) at basement level two and for guests (12 spaces) at ground floor level.
- 2.27 Full details of the description of development are provided within the Planning Statement, Design and Access Statement and Heritage, Townscape and Visual Impact Assessment which are provided at Core Document CD G4.

Chronology of Events

- 2.28 The Appellant's Statement of Case sets out a detailed chronology of events in respect of the appeal proposals which can be found at CD H1. I refer to key matters in Section 5 of this proof.

3. THE APPEAL SITE AND SURROUNDING AREA

- 3.1 I have set out in detail the description of the site and its surroundings within the Statement of Case. For ease of reference I summarise below.
- 3.2 135-149 Shaftesbury Avenue is an island site of 0.12 hectares, bordered to the north by New Compton Street and Phoenix Gardens, to the east by St Giles Passage, to the south by Shaftesbury Avenue and to the west by Stacey Street.
- 3.3 The site is occupied by a cinema which was the former Saville Theatre. The building was listed as Grade II in 1998 when it had already been converted to a cinema. The site does not lie within a Conservation Area but it is adjacent to the Denmark Street Conservation Area to the north and the Seven Dials Conservation Area to the south.
- 3.4 The appeal building is occupied by a four screen Odeon cinema (Use Class D2) having been converted to a twin cinema in 1970 and to a four-screen cinema in 2001. Further details relating to the listed building are contained in the evidence provided by L. Handcock.
- 3.5 The site lies within TfL Zone 1 and is within the Central Activity Zone. It also lies within the Tottenham Court Road Opportunity Area. It has a public transport accessibility level (PTAL) of 6B, which is classed as 'excellent'. Surrounding land uses are typical of the Central London location, comprising retail, leisure, office and residential.

4. RELEVANT PLANNING POLICIES

- 4.1 This section of my Evidence sets out the planning policy framework of relevance to the determination of the Appeal. The key policies of relevance to the heritage asset are also set out in the evidence provided by L Handcock and the key policies relating to design are also included in the evidence provided by J. Dilley.
- 4.2 At the time the Appeal scheme will be determined the Development Plan comprises:
- 4.3 The London Plan (2016)
- 4.4 Camden Local Plan (2017)
- 4.5 It is noted that at the time of writing The London Plan (Intend to Publish version, December 2019) is subject to directions from the Secretary of State. Given the advanced nature of the draft Plan relevant policies will be addressed as material considerations.
- 4.6 I consider the Development Plan policies relevant to determining this appeal include:

Table 4.1 Relevant Development Plan Policies

London Plan (2016)	
2.9	Inner London
2.10	Central Activities Zone – Strategic Priorities
2.13	Opportunity Areas and Intensification Areas
4.5	London’s Visitor Infrastructure
4.6	Support for and Enhancement of Arts, Culture, Sport and Entertainment

7.4	Local Character
7.6	Architecture
7.8	Heritage Assets and Archaeology
7.9	Heritage-Led Regeneration
Intend to Publish London Plan 2019	
GG1	Building strong and inclusive communities
GG2	Making the best use of land
GG5	Growing a good economy
SD1	Opportunity Areas
SD4	The Central Activities Zone
D3	Optimising site capacity through the design-led approach
D4	Delivering good design
E10	Visitor Infrastructure
HC1	Heritage conservation and growth
HC6	Supporting the night-time economy
Camden Local Plan (2017)	
G1	Delivery and location of growth

C3	Cultural and Leisure Facilities
E3	Tourism
D1	Design
D2	Heritage

The relevant policies referenced on the Decision Notice for the appeal scheme are as follows:

Camden Local Plan 2017

- D1 (Design)
- D2 (Heritage)
- C3 (Cultural and leisure facilities)
- A1 (managing the impact of development)
- A4 (Noise and vibration)

National Planning Policy

4.7 There is no need for me to summarise the National Planning Policy Framework (“The Framework”). It is my evidence that the proposed development accords with the development plan and so applying paragraph 11 c) of the NPPF, it should be approved without delay.

5. WHY PLANNING PERMISSION SHOULD BE GRANTED

- 5.1 In this section of my Evidence I consider whether the Appeal proposals accord with the development plan; I also discuss the material planning considerations that should be taken into account in the determination of this appeal, and why planning permission and listed building consent should be granted for the Appeal proposals.
- 5.2 The evidence I give here should be read in conjunction with that prepared by L Handcock in respect of Heritage, D van der Lande in respect of Viability and J Dilley in respect of Design and Architecture.
- 5.3 This section deals with my expert evidence as follows:
- 5.4 That applying the first part of section 38(6) of the Planning and Compulsory Purchase Act 2004 (as recently considered by the Court of Appeal in *Cornwall Council v Corbett* [2020] EWCA Civ 508) the determination which would accord with the Development Plan when read as a whole is that the planning appeal should be allowed
- 5.5 That applying the second part of s.38(6) if the Inspector concludes, contrary to my evidence, that the determination which would accord with the development plan when read as a whole would be the dismissal of the planning appeal, then material considerations indicate otherwise such that the planning appeal should be allowed nonetheless. If the inspector agrees with me that the planning appeal proposals accord with the development plan, then these material considerations would add weight to the case for allowing the appeal (rather than indicating that it should be dismissed).
- 5.6 The material considerations relevant to this appeal are the scheme's compliance with relevant passages in the National Planning Policy Framework, the London Plan and the Intend to Publish London Plan; and the Camden Local Plan 2017.
- 5.7 Applying NPPF 196 the public benefits of the appeal proposals, including heritage benefits, outweigh any less than substantial harm that would be caused to heritage significance. Indeed it is concluded within the L Handcock's Proof of Evidence that the heritage benefits alone outweigh the identified less than substantial harm.

- 5.8 Each of the above points are addressed in turn.
- 5.9 Reason 1 for refusal relates to heritage and design and is thus primarily dealt with in the evidence of L. Handcock and J. Dilley. However, I do address the NPPF196 balancing exercise and summarise the Appellant's conclusion with regard to this reason for refusal.
- 5.10 During the appeal process it has been agreed with the Council that reason for refusal 3 concerning noise from roof top plant can be dealt with by means of planning condition, and that the remaining reasons for refusal can be overcome by entering into a S106 Legal Agreement. These reasons for refusal are therefore not points of contention between the LPA and the Appellant, however my evidence will still address these matters where they have been raised by other parties.
- 5.11 I address Reason 2 for refusal in the body of my evidence.

The Development Accords with the Development Plan as a whole

- 5.12 I set out in detail below why the development proposed in the appeal scheme is considered by me to accord with the Development Plan as a whole, and in doing so refer to the relevant development plan policies.

Land Use: Delivering a Mixed Use Development within the Central Activities Zone

- 5.13 **London Plan Policy 2.9: Inner London** requires boroughs to realise the potential of inner London in ways that sustain and enhance its recent economic and demographic growth.
- 5.14 **London Plan Policy 2.10: Central Activities Zone – Strategic Priorities** requires boroughs to sustain and enhance the distinctive environment of the CAZ and to sustain and manage the attractions of CAZ as the world's leading visitor destination.
- 5.15 **London Plan Policy 2.13: Opportunity Areas and Intensification Areas** requires boroughs to optimise densities, provide necessary social and other infrastructure to sustain growth, and where appropriate, contain a mix of uses.

- 5.16 **London Plan Policy 4.5: London's Visitor Infrastructure** supports London's visitor economy, seeking 40,000 net additional hotel bedrooms by 2036.
- 5.17 **London Plan Policy 4.6: Support for and enhancement of Arts, Culture, Sport and Entertainment** supports the success of London's diverse range of arts, cultural, professional sporting and entertainment enterprises.
- 5.18 **Intend to Publish London Plan Objective GG1** seeks to ensure that London continues to generate a wide range of economic and other opportunities.
- 5.19 **Intend to Publish London Plan Objective GG2** supports the development of brownfield land, particularly in opportunity Areas and prioritises sites which are well connected by public transport,
- 5.20 **Intend to Publish London Plan Objective GG5** promotes and supports London's rich heritage and cultural assets, and its role as a 24 hour city.
- 5.21 **Intend to Publish London Plan Policy SD1: Opportunity Areas** requires Boroughs to support development which creates employment opportunities and housing choice for Londoners.
- 5.22 **Intend to Publish London Plan Policy SD4: The Central Activities Zone** requires the rich mix of strategic functions and local uses to be promoted and enhanced, and the distinct environment and heritage of the CAZ to be sustained and enhanced. The unique concentration and diversity of cultural, arts, entertainment, night-time economy and tourism functions should be promoted and enhanced, and the vitality, viability, adaptation and diversification of the West End should be supported.
- 5.23 **Intend to Publish London Plan Policy E10: Visitor Economy** supports London's visitor economy and associated employment and, within the CAZ, promotes strategically important serviced accommodation.
- 5.24 **Intend to Publish London Plan Policy HC6: Supporting the night-time economy** requires boroughs to promote the night-time economy, particularly in the CAZ and to diversify the range of night-time activities.

- 5.25 The appeal site is located within the Tottenham Court Road Opportunity Area, within Inner London and the Central Activities Zone and is a highly accessible location. The existing cinema use is underperforming and is not contributing as positively as such a use could to the mix of uses in the area or to its social infrastructure. The appeal proposals would re-provide a 4-screen fit for purpose cinema which, whilst of reduced floorspace when compared to the existing cinema, would represent a significant enhancement in terms of the quality of the facility.
- 5.26 The appeal proposals would also provide a 94 bed hotel within the CAZ, contributing to the 40,000 net additional hotel rooms sought by the current London Plan.
- 5.27 I consider the principle of the development in land use terms to fully comply with the London Plan and the Intend to Publish London Plan's aspirations to realise the potential of inner London and to enhance the capital's CAZ. Local Plan Policy G1 states that the Council will deliver growth by securing high quality development and promoting the most efficient use of land and buildings in Camden. Through the re-provision of a purpose built, fit for purpose entertainment facility alongside a high-quality hotel and supporting uses the appeal proposals accord with the London Plan and the Intend to Publish London Plan and the Camden Local Plan.
- 5.28 **Local Plan Policy C3** is concerned with protecting cultural and leisure uses falling under D2 of the Use Classes Order, or which are Sui Generis. Where there is a loss of such a facility it must be demonstrated to the Council's satisfaction that there is no longer a demand. Where a cultural or leisure facility is re-provided the impacts of the re-provision must also be considered.
- 5.29 In my opinion the appeal proposals accord with Policy C3.
- 5.30 By way of introduction, the Council's second reason for refusal, whilst citing policy C3, states only that the development proposals fail to provide a '*maximum reasonable amount of replacement cultural or leisure facilities*'. I have reviewed both the wording of Policy C3 and the justification text and nowhere can I find a policy requirement to provide the maximum reasonable amount of replacement floorspace. Rather, the policy is aimed at addressing situations where *the facility* would be lost.

- 5.31 The cinema facility is not being lost, it would be re-provided. Policy C3 refers specifically to a “*facility*” with the policy biting “*where there is a proposal involving the loss of a cultural or leisure facility*” [my emphasis]. Indeed, the Council at 6.22 of their own Statement of Case place emphasis on the word “*facility*”. I note that there are other policies within Camden’s Local Plan which use floorspace as a measure, for example Policy E2: Employment Premises and Sites which explicitly refers to the need to maintain or increase employment floorspace.
- 5.32 Policy C3 notes that, exceptionally, it may be practicable for a cultural or leisure facility to be reprovided on-site through redevelopment and in such cases the Council will take the following into account:
- i) The impacts of the re-provision on the existing occupier and users of the facility;
 - ii) Changes in the mix of uses arising from the loss of the existing cultural/leisure facility;
 - iii) The loss of cultural heritage; and
 - iv) The affordability of the new facility.
- 5.33 I address each of these in turn.
- i) *The impacts of the re-provision on the existing occupier and users of the facility.*
- 5.34 It is understood that Odeon are intending to move to the new Leicester Square Odeon when it opens, ending their occupation of 135-149 Shaftesbury Avenue. This intention to relocate was evidenced when Odeon agreed an Option to surrender their lease with the owner on 5 December 2012, allowing them to break their current lease agreement with six months’ notice. This demonstrates that their occupation of the existing cinema was not intended to be a permanent situation.
- ii) *Changes in the mix of uses arising from the loss of the existing cultural/leisure facility*
- 5.35 There is no loss of leisure facility as a replacement four-screen cinema is proposed as a core element of a truly mixed-use scheme. The appeal proposals introduce hotel, restaurant, bar and spa uses in addition to the re-

provided leisure use, delivering a range of land uses which are fully supported by planning policies for the Central Activities Zone and for the Tottenham Court Road Opportunity Area.

iii) The loss of cultural heritage

- 5.36 The justification wording for Policy C3 at paragraph 4.62 notes that the scope for re-providing cultural or leisure facilities “is constrained by factors such as cultural history, including associations (e.g. with prominent people or important periods or events) or experience, where these are intrinsic to a particular premises.”
- 5.37 It is my opinion that the replacement of the existing cinema would not result in the loss of any significant cultural heritage. The history of the building is detailed at 2.10 to 2.18 of Laurie Handcock’s evidence and will not be repeated here, save to note that the original use of the building was as a theatre and it was not until 1970 that a cinema use was introduced to the site, resulting in significant negative changes internally and externally to the building. Following listing in 1998, in 2001 the cinema was further subdivided to become a multiplex cinema resulting in further erosion of the building floorplan. It is agreed in the Heritage SoCG that the 1970 remodelling work, and subsequent alterations of 2001, have led to the removal of the majority of the building’s internal fabric.
- 5.38 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 buildings significance), and that in perceptual terms, the building would now read less as a cinema or entertainment venue to the detriment of its cultural heritage.
- 5.39 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 J. 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 as part of a truly mixed use scheme. The visitor will enter the building directly into an area focused on leisure activities, and with the

internal front wall etched with TP Bennett's section of the building. I therefore conclude that the appeal proposals will enhance the cultural heritage of the site.

lv) The affordability of the new facility

- 5.40 Due to the mixed use nature of the proposals the replacement four screen cinema will offer ticket prices that are similar to the existing facility. The replacement cinema will operate as a second showing cinema, allowing the purchase price of films by the operator to be lower than the purchase point from when films are premiered. This lower purchase price of films will allow the operator to provide a better level of comfort, seating and service for users, with the overall ticket price remaining at a similar level to the current facility. The policy concludes, with regards to a replacement facility, that it should be of a same or better standard than the facility which is lost and accessible to its existing users. The Council, at 6.23 of their Statement of Case, state that the replacement facility would be of a lesser standard and would not meet the requirements of policy C3 owing to the diminution of the cultural/leisure facility and experience. The Council provide no evidence that the proposed cinema would be of a lesser standard other than relying on the fact there will be a reduction in floorspace when compared to the existing cinema. In my opinion, the new cinema would be of a better standard than the existing cinema.
- 5.41 In this case, the facility (i.e. the cinema) would be re-provided on-site and none of the 4 criteria specified in the policy for such cases raise any obstacles to what is proposed here; the replacement cinema facility would (to cite the words of the policy) "be at ...[a] better standard than the facility which is lost (sic) and accessible to its existing users". The policy is satisfied.
- 5.42 If however the inspector disagrees and concludes that the policy is engaged because the existing facility would be lost, and not re-provided, it would follow that the policy criterion under C3 for the proposed cinema would be as for a 'new' facility. The wording of Policy C3 states "*The Council will seek opportunities for new cultural and leisure facilities in major, mixed use developments*", and the development proposals clearly meet this aspiration.
- 5.43 In the event the Inspector disagrees with all these arguments then that would mean that criteria a – e (specified for cases in which a facility would be lost

and not re-provided, and where there isn't a "new" facility) would become relevant. Criteria a-e are addressed below.

- a) Whether the premises are able to support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough
- b) The size, layout and design of the existing facility;
- c) Proposals for re-provision elsewhere;
- d) The impact of the proposal on the range of cultural and leisure facilities;

And

- e) The mix of uses in the area.
 - a) *Whether the premises are able to support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough.*

5.44 This first criterion once again demonstrates that we are simply not dealing with a case in which the cinema facility would be lost – it would be bizarre to have to search for an “alternative” cultural / leisure use when the plain fact of the matter is that the existing type of use would be retained by being re-provided on-site. What is proposed would in any event make a positive contribution as referred to in this part of the policy.

b) The size, layout and design of the existing facility

5.45 The building is currently in use as a four-screen cinema with 741 seats and a limited concession offer which does not meet the needs of a modern cinema operator. This is evidenced by the ICO report which was submitted in support of the planning application as part of the Viability Report and is provided at CD G17.

5.46 The existing building is in a poor condition and is in need of substantial interventions to prevent it declining into further disrepair. This is evidenced by the Building Condition Report produced by Hallas & Co and provided at CD G18. Significant reinvestment is therefore needed in order to bring the premises back up to an adequate standard.

5.47 I note that the ICO report estimates the occupancy rate of the existing Odeon cinema as being 18-19% which equates to 133-140 seats out of the provided 741. This is a key indication that the current cinema operation is not securing the best use of the property.

5.48 I also note the supporting letter from the BigPicture, who confirm that cinema operators are moving away from the classic large-screen offerings towards more bespoke, intimate viewings.

c) Proposals for re-provision elsewhere

5.49 A replacement four-screen, 260 seat cinema, supported by Light Cinemas, will be delivered on site as part of the redevelopment. The principle of this was confirmed as acceptable by the Council in email correspondence dated 13th February 2019 (provided with the SoC at CD H1) where it was stated “... we are prepared to run with a reprovided smaller cinema in the basement as you are proposing provided this is solidly backed by an experienced operator entering into a partnership with the applicant and based on the extent of repairs to the building that need to be financed by a mixed use scheme.”

d) The impact of the proposal on the range of cultural and leisure facilities

5.50 As a four screen cinema will remain on site there will be no detrimental impact on the range of cultural and leisure facilities. Indeed it is my opinion that the proposals will have a positive impact on the range of cultural and leisure facilities through the introduction of an alternative cinema offer.

5.51 The proposed four-screen cinema will be a ‘second showing’ cinema. As a second showing cinema, the new films are purchased for screening following the initial run of screenings. This is a unique offer for the West End cinema scene which is dominated by the following traditional cinema operators:

- Odeon Tottenham Court Road (650m walking distance north);
- Odeon Leicester Square (500m walking distance south);
- Cineworld Leicester Square (500m walking distance south);
- Vue Cinema Leicester Square (400m walking distance south)
- Vue Cinema Piccadilly Circus (800m walking distance south west);

- Picturehouse Central (550m walking distance south west); and
- Empire London Haymarket (800m walking distance south west).

e) *The mix of uses in the area*

- 5.52 A four-screen cinema will be delivered alongside other town centre uses as part of the redevelopment, contributing to the mix of appropriate uses within the Central Activity Zone.
- 5.53 I therefore consider the appeal proposals wholly suitable when considered against the first five criteria set out by Policy C3. Indeed, the proposed use was discussed with (and indeed suggested by) the Council during the long and detailed pre-application discussions (see appendix 5 of the appeal statement of case).
- 5.54 At the outset, it should be noted that the Appellant's case is not that there is no demand for any cinema facility, but that there is no real demand for the facility as it currently exists, and that the new cinema would clearly make a positive contribution to the borough.
- 5.55 The Council's statement of case (6.23) states that, where proposals involve the loss of a cultural or leisure facility, the appellant is expected to search for alternative leisure uses for the site through a marketing exercise undertaken over a period of not less than 12 months. The Council go on to state that, in the absence of a marketing exercise the appeal proposal has not adequately explored whether smaller scale, less harmful proposals would be viable and sufficient to subsidise the necessary repair works. Once again, there is no "loss" of a facility here and thus no conceivable need to search for an "alternative" use – the existing use is being retained. Further, I have reviewed Policy C3 and I can find no reference within the policy text for a requirement for 12 months marketing. The first reference to 12 months marketing is made at 4.61 of the supporting text which then refers to further requirements set out in Camden Planning Guidance.
- 5.56 It is my understanding that supporting text cannot introduce new tests to a policy and therefore the Council do not have a policy basis within the Development Plan to require a marketing exercise to be undertaken.
- 5.57 In any event, Camden Planning Guidance: Community Uses, Leisure Facilities and Pubs (March 2018), on which the Council purports to rely,

provides further guidance on proposals involving the loss of a cultural or leisure facility and at 3.5 states “*Any proposals involving the loss of a cultural or leisure use must be accompanied by a marketing exercise and viability assessment that considers the ability of the premises or site to accommodate alternative cultural or leisure uses unless the Council confirms in writing that this is not required.*” [Own emphasis]

- 5.58 Email correspondence from the Council dated 13th February 2019 (within the SoC provided at CD H1) stated “*In reality the only way this could be verified is through marketing evidence, if cinema operators or other cultural uses who might wish to take the building confirmed that it would not be a viable scheme taking account of the works required and the cost of purchasing the site. **We have not sought to go down this route as it would involve considerable delay ...***” [Own emphasis].
- 5.59 In the context of paragraph 3.5 of Camden Planning Guidance: Community Uses, Leisure Facilities and Pubs (March 2018) it is my opinion that this email correspondence provides clear written confirmation that a marketing exercise was not required. I note that it remained open to the Council to request a marketing exercise after this date (and indeed had remained open to them throughout the lifetime of the application) but no such request was made.
- 5.60 **Local Plan Policy E3: Tourism** recognises the importance of the visitor economy in Camden and states that the Council will support tourism development and visitor accommodation in Central London where they do not harm the balance and mix of uses in the area, local character, residential amenity, services for the local community, the environment or transport systems.
- 5.61 The appeal proposals provide a 94 bed hotel as part of a mix of town centre uses at the appeal site. The hotel would be provided alongside a replacement four screen cinema and restaurant, bar and spa uses and would deliver a wholly appropriate mix of uses for the Central Activities Zone and Tottenham Court Opportunity Area.
- 5.62 I therefore consider the appeal proposals to be in accordance with Policy E3 of Camden’s Local Plan.

Design and Heritage (Reason for Refusal 1)

- 5.63 **London Plan Policy 7.4: Local Character** states that development should have regard to the form, function and structure of an area, place or street and the scale, mass and orientation of surrounding buildings.
- 5.64 **London Plan Policy 7.6: Architecture** requires the highest architectural quality. Buildings should comprise details and materials that complement, not necessarily replicate, the local architectural character.
- 5.65 **London Plan Policy 7.8: Heritage Assets and Archaeology** states that development should identify, value, conserve and incorporate heritage assets where appropriate. Additionally development affecting heritage assets and their setting to conserve their significance by being sympathetic to their form, scale, materials and architectural detail.
- 5.66 **London Plan Policy 7.9: Heritage-Led Regeneration** requires the significance of heritage assets to be assessed when development is proposed and schemes designed so that the heritage significance is recognised both in their own right and as catalysts for regeneration. Where possible heritage assets should be repaired, restored and put to a suitable and viable use that is consistent with their conservation.
- 5.67 **Intend to Publish London Plan Policy D3: Optimising site capacity through the design-led approach** states that a development must make the best use of land by following a design-led approach that optimises the capacity of sites.
- 5.68 **Intend to Publish London Plan Policy D4: Delivering good design** requires the design of development proposals to be thoroughly scrutinised, making use of the design review process to assess and inform design options early in the planning process.
- 5.69 **Intend to Publish London Plan Policy HC1: Heritage conservation and growth** requires development proposals affecting heritage assets, and their settings, to conserve their significance and appreciation within their surroundings. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.

- 5.70 **Local Plan Policy D1: Design** seeks to secure high quality design in development which respects local context and character and preserves or enhances the historic environment and heritage assets. In accordance with **Local Plan Policy D2: Heritage** the Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 5.71 **Local Plan Policy D2: Heritage** requires development to preserve and, where appropriate, enhance Camden's heritage assets and their settings. The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposals convincingly outweigh that harm.
- 5.72 I refer the Inspector to the evidence provided by L. Handcock in relation to heritage matters and evidence provided by J. Dilley in relation to design and architecture on the basis of which I conclude that the appeal proposals are fully in accordance with the development plan policies listed above.
- 5.73 In conclusion, in my opinion the determination of the planning appeal proposal would accord with the development plan (when read as a whole) and this appeal should be allowed.

Material Considerations

Presumption in Favour of Sustainable Development

- 5.74 The presumption in favour of sustainable development set out in NPPF 11 c) applies and so, the development should be approved without delay.

Public Benefits as material considerations and in relation to NPPF 196

- 5.75 The appeal proposals would bring a number of public benefits. These are potentially relevant in 3 ways. First, if the Inspector concludes, contrary to my evidence, that the determination which would accord with the development plan would be to dismiss the appeal, then in my opinion these public benefits constitute material considerations which indicate that the appeal should be allowed nonetheless. Secondly, if the inspector concludes that the appeal proposals accord with the development plan, then these public benefits would add weight to the case for allowing the appeal (rather than indicating that it should be dismissed). Thirdly, they are relevant to the weighing process mandated by NPPF 196.

- 5.76 Whether the appeal proposals do cause heritage harm, and if it is concluded that some harm is caused what level this would be, is not agreed with the Council. If the Inspector concludes that the appeal proposals would cause harm then in my opinion this would be less than substantial harm. In the event it is concluded that there is less than substantial harm then that harm is at the lowest end of this scale.
- 5.77 In my opinion, however much, or little, less than substantial heritage harm is found that would be outweighed by the scheme's public benefits.
- 5.78 - A new hotel which would contribute to the local economy via visitor spend and employment;
- 5.79 - A new (replacement, better quality) cinema facility made viable by being supported by other appropriate town centre uses. The benefits of this approach can be maximised through the role of the single applicant freeholder to ensure the strategy is designed and executed on a site wide basis;
- 5.80 - Provision of other town centre uses;
- 5.81 - All the proposed uses being commensurate with the location of the site within the West End and the CAZ ;
- 5.82 - Enhanced public realm, including increased pavement widths to the front of the site;
- 5.83 - Improved access and servicing arrangements;
- 5.84 - Introduction of active frontages and improved permeability into the site.
- 5.85 Heritage benefits, which form part of the wider public benefits, as discussed in L. Handcock's Evidence (who it should be noted is of the view that the heritage benefits alone outweigh any heritage harm caused) are;
- 5.86 - Repair and consolidation of the Bayes Frieze and roundels;
- 5.87 - Reopening of the arched window over the main entrance;

- 5.88 - Exposure of the building's internal front wall, and its decoration with a full-scale section derived from Bennett's drawings, showing the location and scale of the now-lost auditorium;

- 5.89 - Structural works to the building as part of the proposed new development, which will serve to arrest and redress structural failings associated with the cutting out of the original internal built form;

6. ADDRESSING RULE SIX REPRESENTATIONS

- 6.1 Contrary to my evidence and the evidence of L. Handcock, J. Dilley and D van der Lande some other parties have argued that the appeal scheme has unacceptable harmful impacts. There is clearly distance between my evidence and that of the other parties and I consider their key grounds of objection below (Table 6.1):

Table 6.1: Response to Third Parties

Matters Raised	Response in Evidence
Overshadowing of Phoenix Gardens and the impact on invertebrates that inhabit the garden.	<p>A detailed assessment of the proposals and the impact they would have on invertebrates that inhabit Phoenix Gardens as a result of overshadowing has been undertaken by Syntegra Group and is provided at Appendix 3.</p> <p>The assessment concludes that there will be no harmful impact as a result of the proposals.</p>
Impact on the quiet residential village street	The site lies within the West End of London, within Zone 1 and within the CAZ. The proposed uses accord with Development Plan Policies as listed in Section 5 of this Proof of Evidence and as concluded in Paragraphs 1.24 - 1.29 of the Council's delegated report.
Overlooking of the community garden from the hotel rooms	As noted at Paragraph 3.5 of the Council's delegated report the site and its neighbours are located in a dense urban environment. There are already multiple windows from multiple buildings overlooking the community garden and it is noted that Camden Planning Guidance: Amenity states as a 'Key Message' (page 4) that 'Public spaces benefit from overlooking as natural surveillance'.
Sense of enclosure to Phoenix Gardens	The site forms one element in a series of taller buildings surrounding Phoenix Gardens. The verified views which are provided at pages 97-101 of J. Dilley's Proof demonstrate the limited impact the proposed roof extension will have in terms of sense of enclosure.

Impact of the roof top bar from noise	To ensure that there is no detrimental impact from the roof top bar the use of the proposed terrace will be limited to 10.00 – 19.00 Monday to Sunday. In addition an Operational Management Plan will be secured via S106 agreement to ensure that the roof top bar in addition to the other proposed uses is operated in a manner which is not detrimental to residential amenity.
Design	This is addressed in the Proof of J.Dilley.
Loss of residential amenity	The Council's delegated report at Section 3 assesses neighbouring amenity and concludes that impacts in regards to Daylight/Sunlight, Overlooking and Noise are acceptable; however we reserve the right to rebut this by way of further evidence.
Reduction to the building's cultural function	This is addressed in Section 5 of this Proof of Evidence and within the Proof of Evidence prepared by L. Handcock.
Alteration to the external appearance of the building	This is addressed within the Proofs of L. Handcock and J. Dilley
That the building could return to a dedicated theatre or performance use	This is addressed within the Proof of D. van der Lande.
Materials, appearance and form are unsympathetic	This is addressed within the Proof of J. Dilley.
Lack of marketing material	This is addressed within Section 5 of this Proof of Evidence.
Enforcement of the Servicing Management Plan	The capacity of the Local Planning Authority to enforce the Servicing Management Plan (SMP) is outside of the appellant's control; however, we are aware that one of the Rule 6 parties intends to bring evidence with regard to servicing of the proposed development. The Appellant reserves

	<p>the right to rebut this and if necessary for a relevant witness to attend the inquiry</p>
<p>Enforcement of the Construction Management Plan</p>	<p>The capacity of the Local Planning Authority to enforce the Construction Management Plan (CMP) is outside of the appellant's control. It is expected that a CMP will be required by the S106 Agreement and a full and detailed CMP will be submitted to Camden for sign off prior to any works commencing on site. As part of this a Working Group which will include local residents and amenity groups will be set up for the duration of the construction period to ensure adherence with the approved CMP.</p> <p>We reserve the right to rebut this by way of further evidence.</p>

7. SUMMARY AND CONCLUSIONS

- 7.1 I have, within this Proof of Evidence, considered whether the Appeal proposals accord with the development plan; I have also laid out the material planning considerations that should be taken into account in the determination of this appeal, and why planning permission and listed building consent should be granted for the Appeal proposals.
- 7.2 It is my view that applying the first part of section 38(6) of the Planning and Compulsory Purchase Act 2004 (as recently considered by the Court of Appeal in *Cornwall Council v Corbett* [2020] EWCA Civ 508) the determination which would accord with the Development Plan when read as a whole is that the planning appeal should be allowed.
- 7.3 In applying the second part of s.38(6) if the Inspector concludes, contrary to my evidence, that the determination which would accord with the development plan when read as a whole would be the dismissal of the planning appeal, then material considerations indicate otherwise such that the planning appeal should be allowed nonetheless. If the inspector agrees with me that the planning appeal proposals accord with the development plan, then these material considerations would add weight to the case for allowing the appeal (rather than indicating that it should be dismissed).
- 7.4 For the reasons set out in Section 6 of this Proof of Evidence it is my view that the matters raised by third parties do not lead me to conclude that the proposals do not accord with the development plan as a whole.