

135 – 149 SHAFTESBURY  
AVENUE, LONDON

Evidence of

David van der Lande BSc (Hons) MRICS

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### Items in separate Appendices

- Item 1: David van der Lande Curriculum Vitae
- Item2: Icen Financial Viability Assessment 2018
- Item 3: BPS Report March 2018
- Item 4: Icen Comments to BPS April 2019
- Item 5: Icen Comments to BPS May 2019
- Item 6: BPS Report May 2019

# 1. QUALIFICATIONS AND EXPERIENCE

- 1.1 I, David van der Lande, am a Director of I Squared Development Management, formerly Director of Icen Projects. I am a qualified chartered surveyor of 23 years standing advising on development matters. I am a member of the Royal Institution of Chartered Surveyors (RICS). I hold an Honours Degree in Estate Management from Southbank University and am a Registered Valuer with the RICS. I attach my curriculum Vitae at Item 1.
- 1.2 I have held Partner or Director positions with Donaldsons LLP, DTZ plc (now Cushman Wakefield), Town Centre Regeneration Ltd advising on viability of property development for twenty years. I sit on the Urban Regeneration Committee of Revo, formerly the British Council of Shopping Centres, which addresses the challenges of urban development, including reuse of retail space. Prior to that I was on the Asset Management Committee of Revo, which collates, considers and advises on the utilisation, investment and valuation of retail led assets for the industry.
- 1.3 I have carried out multiple viability appraisals for development schemes with a mix of uses.
- 1.4 I am a member of the Compulsory Purchase Association.
- 1.5 I am regularly asked to lecture on regeneration, development viability and compulsory purchase issues to industry groups.
- 1.6 I advise public and private companies and Councils on development matters in the United Kingdom.
- 1.7 I am familiar with the site and surrounding area.

## **2. DECLARATION**

- 2.1 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 2.2 I confirm that I understand and have complied with my duty to the Inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 2.3 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 2.4 I confirm that I have no conflicts of interest.
- 2.5 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Inquiry.
- 2.6 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement.
- 2.7 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

### **3. SCOPE OF EVIDENCE**

3.1 My evidence of proof is presented under the following sections:

- Section 4 – Instructions
- Section 5 – Theatre Uses Explored.
- Section 6 – Covid 19
- Section 6 – Conclusion.

## 4. INSTRUCTIONS

- 4.1 Icen Projects was instructed to carry out a Financial Viability Assessment (FVA) of the proposed scheme for the planning application that is the subject of this appeal. The FVA was produced in conjunction with instruction by the client of specialist advisers in Cinema, Hotel and Restaurant uses and the employment of a full professional team in respect of the proposals being brought forward.
- 4.2 The following reports were prepared as part of the viability submission:
- (i) Building condition report by Hallas & Co. Chartered Surveyors
  - (ii) Cost plan by Gardiner & Theobald cost consultants
  - (iii) Feasibility reports by
    - a. The Hotel Management Company,
    - b. the Independent Cinema Office, and
    - c. The Ford Consultancy, in respect of the restaurant use.
- 4.3 These reports were used to inform the appraisal for the proposed scheme that was prepared in Argus Developer, which enables an operational business model to be formed that includes a cashflow for all potential revenues and costs based on the assumptions set out in the FVA report (Item 2).
- 4.4 The FVA generated a net loss of -£5.31m. This represented a -6.3% negative return on cost. Against a total profit target of 17.5% on cost, this represents a shortfall of in the order of £20m. The FVA report therefore concluded that the scheme would not be viable when assessed on the standard basis. However, the applicant has operational business expertise with a successful track record in delivering operational businesses from listed buildings with a detailed understanding of how to generate above market average returns and location knowledge and on that basis was and remains willing to proceed.
- 4.5 The detailed FVA report submitted in January 2018 for the planning application was independently assessed for the Council by BPS Surveyors in March 2018 (Item 3) who confirmed the reasonableness of the assumptions and overall conclusions, and stated: “we are in agreement with the overall conclusion that the scheme falls far short of a ‘break even’ position and therefore no additional

planning contributions (including affordable housing contributions) can viably be delivered". Following correspondence with BPS in April 2019 (Item 4) and May 2019 (Item 5) the March 2018 BPS report was updated in May 2019 (Item 6), but the conclusion in relation to the proposed scheme remained the same.

- 4.6 The Council's delegated report, when refusing the application, did not include any issues relating to the viability of the proposed scheme as a reason for refusal, or raise any issue regarding the ability of the appellant to successfully build out and manage the scheme.



## 5. ALTERNATIVE THEATRE USE

- 5.1 Following representations received from the Theatres Trust, the Council asked BPS to assess whether theatre use could be viable. BPS's May 2019 updated report concluded that "the *apparent* strong potential for theatre use holds the *prospect* that theatre use would be valuable enough to cover the repair costs" (my emphasis).
- 5.2 I note that this was far from an unequivocal conclusion by BPS, and that this conclusion was based on an assumed 1,400 seat theatre whereas the appellant's theatre consultants have assessed that a modern theatre of only around 1,000 seats could be provided within the building.,
- 5.3 I note the following points:
- 5.4 The FVA model is the correct one to use for planning purposes and I have seen no evidence which suggests that theatre use would be viable.
- 5.5 I have carried out a high-level assessment of theatre use at the site, which concludes that, on the basis of the information received from Charcoalblue, specialist theatre consultants, a theatre use would not be viable. Drawing on the information provided by the Appellant's consultants, including Gardiner and Theobald cost consultants, estimated repair and reconstruction costs for a 1,000 seat Theatre would be in the region of £42m. Simply speaking, income received from a theatre business would not be able to support the costs of the works proposed and acquisition of the site. Coupled with the amount that a theatre operator would need to pay to purchase or rent the building, this makes a theatre use significantly unviable for planning purposes.
- 5.6 The Council's delegated report stated only that "the Council cannot fully assess whether alternative, less harmful proposals would be viable at the site", not that theatre use would be viable.
- 5.7 Following the Council's decision notice, a number of theatre operators were approached to gauge interest in the site for theatre use. Only one offer was received from the Ambassador's Theatre Group and this fell below the appellant's

expectations of the value of the land and discussions did not therefore progress. I have not seen any other offers.

5.8 No other uses were assessed as viable for planning purposes.

5.9 I will respond in a rebuttal should the Council or any other party submit evidence to the inquiry suggesting that a theatre use of the site would be viable.

## **6. POST FEBRUARY 2020 – COVID 19**

- 6.1 I have given further consideration to impact of the pandemic on viability. There are two points that I note the first is that the scheme is likely to have a significant build period and therefore the effect of the pandemic may be significantly reduced by the time of opening,
- 6.2 Secondly that a range of proposed uses in the appellant's scheme in the venue (cinema, spa, restaurant, bar and hotel) is likely to have a greater resilience to market challenges than a single use such as theatre and is thus better able to support the maintenance of the building going forward.

## **7. CONCLUSION**

- 7.1 The proposed scheme was fully tested and verified by the Council's instructed consultant and found to be unviable. Nevertheless, this did not form a reason for refusing the application.
- 7.2 Following intervention from the Theatres Trust, the Council have suggested that the viability of theatre use should be examined.
- 7.3 Our analysis indicates that when assessed on a standard viability basis of potential revenue and the costs associated with redevelopment for theatre use (which is the appropriate one when assessing planning applications and was used in both the initial viability assessment and the Council's review), theatre use would not be viable.
- 7.4 No satisfactory offers from theatre operators were received by the appellant.
- 7.5 In my opinion no other use would be viable.