

Report to the Scottish Ministers



PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

Report by M J Culshaw, a Reporter appointed by the Scottish Ministers

- Case reference: HGG/A/LA/1169
- Site Address: Former Odeon Cinema, 7 Clerk Street Edinburgh
- Application for listed building consent by Duddingston House Properties
- Application for listed building consent ref 08/00197/LBC dated 21 January 2008 called-in by notice dated 3 June 2009.
- The development proposed: partial demolition and internal and external alterations
- Date of site visit by Reporter: 7 September 2009

Date of this report and recommendation: 30 October 2009

**Partial demolition and internal and external alterations
Former Odeon Cinema, 7 Clerk Street Edinburgh**

• Case reference	HGG/A/LA/1169
• Case type	Application for listed building consent
• Reporter	M J Culshaw
• Application reference and date	08/00197/LBC dated 21 January 2008
• Applicant	Duddingston House Properties
• Planning authority	City of Edinburgh Council
• Other parties	Historic Scotland
	Various interested parties and persons
• Date of report	30 October 2009
• Reporter's recommendation	That listed building consent be refused

Ministers' Reasons for Call in:

The call in Direction was given in view of the proposed development's possible departure from local and national policy with regards to the demolition of listed buildings.

The Site:

Former Odeon Cinema, 7 Clerk Street, Edinburgh

Description of the Development

Partial demolition and internal and external alterations

The Council's Case:

The application had been comprehensively considered by the Council and met the tests for the demolition of listed buildings set out in local and national policy. In particular the applicant had demonstrated beyond all reasonable doubt that the building was incapable of viable use in its existing form, that the economic benefits of the development in this location clearly outweighed any benefits of the current vacant building, or indeed any other potential use, and that no restoring purchaser had come forward.

The Appellant's Case:

The application had been the subject of full discussion with the Council and Historic Scotland. The key policy tests had been identified and addressed, and fully detailed technical reports prepared on the significance of the building, its condition, the economic benefits of the proposal and the scope for alternative uses. A Planning and Design Statement, a Marketing and Economic Statement and Consultation Statement had also

accompanied the application. Comprehensive efforts had been made to market the property to a restoring purchaser without success, and valuation reports had confirmed the open market valuation of the property. Criticisms by Historic Scotland and its advisers had been addressed. Considerable support existed from local organisations in addition to the Council, and the proposal would be of benefit to the local economy and the city.

Other Parties' Cases:

Opposed

- Cinema, theatre and architectural bodies considered that insufficient attempts had been made to market the building which was of high quality and one of very few 'atmospheric' style cinemas remaining in the UK and designed by an eminent cinema architect.
- Alternative means existed to retain the important elements of the building and find appropriate and viable uses for it.
- While the proposed development was of high quality the tests for the demolition of a listed building had not been met.
- The applicants' expectations of price for the building were too high.

In favour

- The concept of an arts hotel was innovative had considerable merit and should be supported.
- Tourism to the city would benefit, as would educational establishments in the city associated with the arts.
- The applicants had demonstrated there was no viable use for the cinema's restoration.
- The regeneration of the South Side would be supported.

Reporter's Reasoning:

1. Scottish Ministers' policy in relation to the demolition of listed buildings in Scottish Historic Environment Policy is that no listed building should be demolished unless it can be clearly demonstrated that every effort had been made to retain it, and should only be approved if the building is not of special interest; is incapable of repair; its demolition is essential to delivering significant benefits to economic growth or the wider community; or its repair is not economically viable and it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

2. The building is of special interest, listed in Category B. Its auditorium which is proposed to be demolished is of particular interest as one of few remaining of this style in the UK and the work of an eminent architect. It is capable of repair. The scheme which would result from demolition would deliver economic benefits to the local community and nationally, but they would not be so significant as to outweigh the presumption against demolition, and since benefits would also be gained from the repair or restoration of the building its demolition is not essential. The repair of the building is not economically unviable, and while no potential restoring purchasers have been found who are acceptable

to the applicants there remains interest in the purchase of the building from parties whose intentions would be to preserve it.

3. It remains possible that the current proposals represent the best opportunity for the Odeon cinema to be brought back into use, even though that would involve the loss of the auditorium and the consequent considerable reduction in the building's special interest but at this stage not all alternatives to demolition have been fully explored.

M J Culshaw
Reporter



REGISTERED



INVESTOR IN PEOPLE



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The Scottish Ministers
Edinburgh

30 October 2009

**REPORT FOLLOWING ACCOMPANIED SITE INSPECTION ON 7 SEPTEMBER 2009
PARTIAL DEMOLITION AND INTERNAL AND EXTERNAL ALTERATIONS
FORMER ODEON CINEMA, 7 CLERK STREET, EDINBURGH**

1. In accordance with my appointment I conducted an inspection of the application site and its surroundings on 7 September 2009. The following persons were present.

For the applicants:	Gary Mappin of GVA Grimley Charles Martin of Largo Management
For City of Edinburgh Council	Jenny Bruce Cllr Steve Burgess
For Historic Scotland	Steven Robb
Interested persons	Rt Hon George Foulkes MSP Sarah Boyack MSP Alan Scobie of Rock Elim Pentecostal Church Suzanne Loftus of Cutting Edge Theatre Productions Dale Gibson of Save the Odeon Limited Graham Wear of Save the Odeon Limited John Need Gary Painter of Cinema Theatre Association Ron Hewitt of Edinburgh Chamber of Commerce Tom Pate

2. Since all the papers and documents relevant to this application are contained in the applications files and available to Ministers this report does not attempt to relate them all fully or chronologically. Instead I have summarised the positions of the various parties as they appear to me as at the date of my inspection, referring to the history and development of the proposal as necessary. The submission of Historic Scotland was the first to be received following call-in and was copied to the other two main parties, who responded in their own submissions. For that reason in this report I have given the gist of the Historic Scotland position before dealing with the City of Edinburgh Council and the applicants. Before my site visit took place I also gave all those whose views on the applications had been expressed to the Council, Historic Scotland or The Directorate for Planning and Environmental Appeals an opportunity to bring any fresh information to my attention. I have taken account of all responses received.

Description of the application premises

3. Full descriptions of the premises the subject of the application are contained in the representations of the main parties which are available to Ministers and are not in dispute. I therefore confine myself in this report to a brief description of the salient features.

4. The Odeon Cinema, formerly known as The New Victoria, is located at 7 Clerk Street, in Edinburgh's Southside and within the Southside Conservation Area. The main entrance facade onto Clerk Street forms its eastern boundary and occupies a narrow gap between 4 and 5 storey tenement buildings. Its western boundary to Buccleuch Street is also a gap between tenements and is occupied by a single storey corrugated roofed building constructed shortly after the main cinema to provide sheltered access to the stalls. The bulk of the building lies within a backland area and is bounded to the north and south by the rear of tenement buildings and their associated gardens and light wells.

5. A useful description of the historical development of the cinema is provided in the Conservation Plan prepared in September 2007 for the applicants by Simpson and Brown.

6. The description in the Scottish Ministers' statutory list, in which it is listed as Category B, is as follows:

W.E Trent of London, 1930. Faience front of 4 doric columns in antis, plainish foyer; but containing within fine atmospheric 'Greek Theatre' interior, curved Ionic vestibule, galleried auditorium, channelled wall surfaces with Ionic order, niches with figures; wide pedimented proscenium with octagonal Corinthianesque columns; curved back wall with Ionic colonnades at balcony level, Greek key gallery front; sky ceiling with illuminated stars.

7. The notes to the list description read as follows:

Built as New Victoria Cinema, executed by John Herdan¹. Prior to alteration for cinemascope the proscenium arch had splays of six disengaged columns. An outstanding example of the work of the most famous British cinema specialists.

8. Historic Scotland have undertaken consultation with the building's owners concerning the upgrading of the Odeon from category B to category A, but this has not been taken forward while the planning application for the building is outstanding. An updated list description, considerably fuller than that quoted above, was prepared and is appended as Annex 4 to the written submissions of Historic Scotland.

The proposal

9. The application is for the partial demolition of, and internal and external alterations to, the former Odeon Cinema, 7 Clerk Street Edinburgh to create artist studio and gallery space and hotel accommodation. The proposals include the removal of interior and roof of the auditorium and the removal of the shed structure fronting Buccleuch Street. The brick walls of the auditorium would be retained along with the Clerk Street facade, the entrance foyer and the crush hall at ground floor, and the cafe at first floor level.

¹ In the consultative description of the building as Category A this name is correctly given as John Jerdan.

10. The application was accompanied by a range of drawings describing the proposal and the related planning application, together with a Planning and Design Statement, A Consultation Statement and an Economic and Marketing Statement.

11. A concurrent application for planning permission was submitted to the City of Edinburgh Council for the partial demolition and conversion of former cinema (in part) and new development to create hotel (incorporating bar/restaurant facilities), artist's studios/galleries and community facilities. The Council have resolved to grant planning permission subject to conditions following the signing of a legal agreement. Their website indicates that this application remains undetermined pending completion of the legal agreement.

Reason for call in

12. The call in letter indicated that the Scottish Ministers considered these proposals are a matter of importance which they ought to decide themselves. The Direction was given in view of the proposed development's possible departure from local and national policy with regards to the demolition of listed buildings.

Legislative and Policy Context

13. Section 14(2) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 requires the planning authority or the Scottish Ministers, in considering whether to grant listed building consent for any works to *"have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"*.

14. The application when considered by the Council was assessed against the then current National Planning Policy Guidance (NPPG) 18 and the Memorandum of Guidance on listed buildings and conservation areas. Those two sources have now been replaced by Scottish Planning Policy (SPP) 23 Planning and the Historic Environment and the Scottish Historic Environment Policy (SHEP). For the purposes of this report I have had regard principally to the latter documents.

15. SPP23 indicates that in considering applications for the demolition of a listed building the Scottish Ministers' policies are set out in the current SHEP. The section of SHEP relating to listed buildings is paragraphs 3.29 to 3.53. Paragraph 3.50 says:

In the case of applications for the demolition of listed buildings it is Scottish Ministers' policy that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it. Planning authorities should therefore only approve applications for demolition where they are satisfied that:

- a. *The building is not of special interest; or*
- b. *The building is incapable of repair; or*
- c. *The demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or*
- d. *The repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.*

16. In terms of local policy the Edinburgh and the Lothians Structure Plan contains Policy ENV1C: International and National Historic or Built Environment Designations indicates that development which would harm the character, appearance and setting of (among other things) listed buildings should be resisted. Local plans should contain policies and, where appropriate, proposals for their protection and enhancement.

17. The current adopted local plan is the Central Edinburgh Local Plan. Policy CD2 (Listed Buildings) indicates that proposals affecting a listed building “*will be considered for their effect on its character and if appropriate their contribution to its care and restoration. Alterations, extensions or changes of use...will not be allowed if likely to diminish the architectural integrity of the building or its historic interest*”. The emerging Finalised Edinburgh City Local Plan has not yet been adopted, and thus cannot be afforded full weight, though its inquiry has been completed and the report has been received by the Council and it is thus at an advanced stage. Policy ENV1 states:

Proposals for the total or substantial demolition of a listed building will only be supported in exceptional circumstances, taking into account:

- a) *The condition of the building and the cost of repairing and maintaining it in relation to its importance and to the value to be derived from its continued use*
- b) *The adequacy of efforts made to retain the building in, or adapt it to a use that will safeguard its future, including the offer of the building for sale or long lease to a restoring purchaser on the open market at a price reflecting its condition*
- c) *The merits of alternative proposals for the site and whether the public benefits to be derived from allowing demolition outweigh the loss.*

Summary of submissions

Historic Scotland

18. Historic Scotland had objected to the application to the Council, indicating that it was not believed that the current proposals represented an acceptable conservation solution for the building, and that the loss of its principal space would significantly erode its special interest. It accepted the possibility that this level of intervention was the minimum necessary to prevent the building being lost altogether, but had not seen information which demonstrated that clearly.

19. They noted that the application was opposed by the Theatres Trust, but supported by the Edinburgh Chamber of Commerce, the Edinburgh School of Art, Visit Scotland and the Cockburn Society. Since the Council’s decision a petition of 5,300 signatures had been submitted by a new body called New Victoria opposing the proposals, together with strong views from a range of organisations, MSPs and others.

20. Although to inform their decision the Council had commissioned Montagu Evans to provide an overview of all information currently available, to be followed up by an independent professional assessment on the future economic viability of the building to establish if there were any practical ways of keeping it, only the first stage of the brief had been carried out, with only a review of information provided by other parties rather than in independent examination of all aspects and opinions on the case including the likelihood of alternative uses. The conclusion of the Montagu Evans report that the current scheme was the most economically viable solution for a challenging site overlooked the fact that the

policy framework sought not the most economically viable scheme, but a viable scheme which allowed the retention of the asset.

21. The submission by Historic Scotland assessed the proposal against both the tests in the Memorandum and those in SHEP. As to the importance of the building (the first test in both documents) this was assumed by virtue of its inclusion in the statutory list. Recent reassessment judging it to be worthy of Category A status was generally agreed by the Council and the applicants. The Council's Committee report described the building as culturally significant as an example of Trent's work and as only one of two remaining 'atmospheric' cinemas in the country and said there was no justification for the loss of a substantial part of the building. The applicants' Conservation Report prepared by Simpson and Brown concluded that the cinema was a rare example of an atmospheric style of cinema to the design of a prominent English cinema architect. It graded the facade to Clerk Street, its streetscape presence and the auditorium as of regional (Scotland) or national importance (Britain) and recommended a presumption against the loss of significant fabric and the conservation and restoration of the auditorium.

22. In terms of condition (the second test in both documents) there was no dispute that the building was in fairly good condition and not beyond repair. The test in SHEP stated that a building must be incapable of repair for its demolition to be successfully argued on ground of condition. This had not been argued by the applicants.

23. The third SHEP test required demolition to be essential to achieving benefits to economic growth and the wider community. GVA Grimley in their report for the applicants stated that the proposals would provide economic and community benefits, but also accepted that there could have been significant social benefits to the community from one of the offers received. The applicants had failed to provide robust evidence to demonstrate beyond doubt that there were no other uses for the building which could provide similar or greater benefits while retaining the auditorium.

24. The fourth test in the SHEP, which was an expansion of the test of alternative uses in the Memorandum, was the one the applicants used to justify the demolition of the auditorium. It related to alternative uses possible by restoring purchasers by way of marketing, but added the economic viability of repairs to the marketing test. The building was in fairly good condition and it had not been argued that its repair would present particular difficulties. Moreover if the repair of the building were economically unviable there would not have been several significant offers received for the building.

25. To consider the Council's conclusion an assessment had been commissioned by Historic Scotland from Drivers Jonas. They concluded that the demolition of the auditorium was not justified because one of the expressions of interest during the marketing exercise in 2007 (a bid from the Rock Elim Church of £1.8 million) was reasonable, and that the applicant had failed to demonstrate that there were no other uses that could offer similar or greater economic or social benefits while retaining the auditorium or avoiding its demolition.

26. GVA Grimley on behalf of the applicants had responded, concluding that the building had been marketed at a price reflecting its location and condition to potential purchasers for a reasonable period and had not elicited any credible offers from parties, and that therefore

partial demolition could be supported, justified against relevant listed building policy. Historic Scotland did not believe this conclusion to be correct.

27. The advice of the Scottish Government's Principal Estates Surveyor had been sought, which had raised significant questions about the purpose and basis of the valuation of the Odeon on which the applicants appeared to rely when making decisions. The SGPEs was not satisfied beyond reasonable doubt that every effort had been exerted by all concerned to find practical ways of keeping the building.

28. No information had been submitted which established the market value of the property at the time the applicants acquired it. It was known that they paid £4.5 million for this property and the former Odeon in Renfield Street Glasgow, and that for the purposes of registration this property was valued at £1.5 million. Montagu Evans indicated to the Council that this was a notional value and that an independent market valuation prepared by Colliers CRE in 2003 was £2.3 million. However that valuation had been prepared for the Royal Bank of Scotland, stated a market value of £2.3 million if the building were marketed for 18 months, and £1.8 million if marketed for 6 months. It also stated that during the period of the loan both rental and capital value would remain static, and while noting the listed status of the frontage and foyer, did not mention the proscenium and auditorium. It thus appeared to offer strong scope for the redevelopment of the parts not mentioned as listed. Historic Scotland's consultants and the SGPEs had concerns that the rental and yield figures suggested would be hard to achieve for a traditional cinema layout and conformed better to values for a modern leisure building. The valuation of £2.3 million in 2003 could not be relied on as a capital valuation of the building in its unaltered form for disposal purposes or as a secure basis for leasehold valuations.

29. In these circumstances the rejection of offers from restoring purchasers as too low did not seem reasonable.

30. In their report of 30 March GVA Grimley conceded that given its age the report was no longer material, and introduced an updated version (Dec 2008), also prepared by Colliers CRE for lending purposes on behalf of RBS. However this report was withdrawn by Colliers CRE, indicating that its purpose had been to assist RBS in considering a loan to the applicants.

31. Between 2004 and 2007 two offers to purchase the building had been accepted by the applicants (for £3.4 million from The Consortium and £4 Million from Fat Cat Productions) had been accepted but neither resulted in a sale. In the case of The Consortium this followed a reduction in the offer after survey. All other offers were rejected on the basis that they fell below the value assigned by the applicants to the building. The reason an offer of £1.8 Million by the Rock Elim Church was considered too low was stated to be in the light of the purchase price and holding costs incurred by the applicants, and on the basis that it was difficult to see how the proposed use would generate enough income for its maintenance. However the purchase price was unknown and in the view of Historic Scotland since the building was purchased in full knowledge of its listed status the costs of holding the building were not a relevant consideration. The expressed doubts over the church's ability to maintain the building were not supported by any analysis of their accounts or business plans.

32. The applicants appeared not to have considered ecclesiastical use as part of their assessment of other possible uses for the building, despite the fact that such a use avoided potentially difficult issues such as late licensing. Historic Scotland's consultants Drivers Jonas considered the Rock Elim Trust offer reasonable and realistic, being based on achievable uses for the listed building rather than the hope of more profitable uses. Rock Elim Trust remained interested in the building and the New Victoria organisation had indicated an intention to bring forward a business plan for the building which had not yet been forthcoming. However it seemed possible judging by past refusals of offers that the financial expectations of the owner might limit the likelihood of a successful deal with a restoring purchaser being completed.

33. It was still possible that the current proposals represented the best opportunity for the cinema to be brought back into use, albeit with the loss of the auditorium thus reducing its architectural and historic merit and its overall integrity. The economic downturn may have affected the likelihood of restoring purchasers coming forward, though this might not affect an ecclesiastical use.

34. The partial demolition of the building and the loss of the auditorium of the former cinema had thus not been justified.

35. Appended to the submission of Historic Scotland were location plans of the building, photographs of the exterior and the interior before subdivision, its current list description and the draft description of the building as Category A. In response to questions from the appellants Historic Scotland also forwarded a copy of the commissioning letter sent to Drivers Jonas which resulted in their report of 6 March 2009 and a copy of the report of the Scottish Government Principal Estates Surveyor.

City of Edinburgh Council

36. The proposal was considered by the relevant Committee of the Council on 29 October 2008, when it was resolved to grant listed building consent subject to conditions.

37. The application was accompanied by comprehensive supporting information and the Council commissioned an independent study by Montagu Evans to provide expert advice on the future use and economic viability of the building, which informed the application process. Montagu Evans also reviewed the marketing activities undertaken by the applicants and confirmed that the series of marketing campaigns which had been undertaken were extensive and thorough and demonstrated that the applicants had taken every possible step to secure the Odeon's future. They concluded that on balance the design proposals by MAKE architects for the sympathetic redevelopment of the cinema was the most economically viable solution for a challenging site.

38. The application was considered by the Committee in relation to National Planning Policy Guidelines (NPPG 18), Lothian Structure Plan Policy, Central Edinburgh Local Plan Policy and the Finalised Edinburgh City Local Plan Policy. The council also considered the Memorandum of Guidance on Listed Buildings and Conservation Areas 1998. The Council's submission also considered it against Scottish Planning Policy (SPP) 23 Planning and the Historic Environment, October 2008, and the tests set out in the Scottish Historic Environment Policy (SHEP) October 2008 (revised July 2009).

39. The Council's consideration was also informed by consultation responses from Historic Scotland and the Theatres Trust and by representations from amenity bodies and community groups.

40. In response to the allegation by Historic Scotland that only the first stage of the brief was carried out by Montagu Evans the Council pointed out that the report did far more than that. Section 8 Assessment of Economic Viability examined potential alternative uses for the building including licensed property, cinema, bingo hall, student accommodation, residential and hotel uses. They explored the feasibility of the various uses and gauged the likely interest from operators bearing in mind that neither a late licence nor total demolition of the building was realistically in prospect. They concluded that there was no sustainable economically viable use for the building assuming retention of the auditorium, and that partial demolition allowed for optimum use of the building whilst having regard to planning policy and listed building guidance.

41. While the Council agreed with Historic Scotland that there could have been significant social benefits to the wider community from one of the offers received for the building, that offer was not credible.

42. In its current condition the building did not contribute to economic growth and indeed could be argued to have had a negative impact on trade on Clerk Street for its six years of vacancy. The report by consultants EKOS Economic Development and Regeneration (May 2008) on behalf of the applicants reviewed in depth the wider economic benefits which would result if the development were to take place and were fully occupied. These included the number of on-site and off-site jobs created and the additional GVA and salaries generated at both local and national levels. This amounted to 120 jobs at local level and 110 at national level, generating GVA of £5 million at local level and £2.9 million nationally, and additional salaries of £2.6 million at local level and £1.5 million nationally. One off construction jobs of 90 locally and 120 nationally would generate one-off GVA of £4.5 million and £5.7 million respectively. The Council considered there would be clear and demonstrable economic benefits both the Clerk Street and Edinburgh and to the wider Scottish economy of the proposed "Arts" hotel use with ancillary facilities and, particularly in the current environment, this contribution should be given significant weight.

43. Although Historic Scotland indicated that several significant offers had been received for the building during the applicants' ownership no formal detailed legal offers had been submitted to the applicants as requested by them. While the building was in reasonable condition it was not economically viable to repair the building as it was proven beyond reasonable doubt that there were no restoring purchasers interested in purchasing the property at a price reflecting its condition over a reasonable period of time.

44. For a price reflecting its location and condition to potential restoring purchasers to be established would normally require an independent valuation, and two such valuations had been conducted by Colliers CRE for the applicants' funding partner RBS in April 2003 and December 2008. These gave values of 2.3 Million and £2.9 Million respectively. At face value alone the Rock Elim Church "offer" of £1.8 million was £0.5 million short of an independent expectation of value.

45. The Council's understanding of the purpose of the valuations was to provide the RBS with an independent Chartered Surveyor's view on the value of the building in an open market on which to fund debt finance. These followed recognised and standard market practice and were open market valuations of the building in its current condition. However they were not the sole factor behind any decision by the applicants as to whether they would retain or sell the asset. The key determining factor appears to have been whether any offer made was from a credible *restoring* purchaser or lessee capable of delivering a transaction. For Historic Scotland to say that the applicants appeared to have relied on valuation advice did not fairly reflect the applicants' decision-making process. The applicants have never received a formal legal offer from a restoring purchaser.

46. Similarly, despite criticisms from Historic Scotland of the rental and yield methodologies, those employed were standard calculations as advised by RICS and based on comparable evidence. The suggestion by Historic Scotland that Colliers CRE valuation could not be relied on brought their professional reputation into question and was misleading. The 2008 valuation had been withdrawn because it had been passed to Historic Scotland on the basis that it contained sensitive commercial information and was to be treated as confidential.

47. The valuation was for bank lending purposes and was not used for marketing purposes, though it naturally informed the applicants as to the asset's value at the time. The UK commercial property market experienced unprecedented capital growth in values between 2003 and 2007 and increases in the quoted price for offers reflected that growth.

48. Historic Scotland were correct to say that no credible offers were made. Although meetings were held with The Consortium they could not demonstrate proof of funding or that they were a potential restoring purchaser or that their proposals were credible. The £1.8 million bid by the Rock Elim Trust was the result of several meetings over a two year period. The offer was conditional on a number of factors which were unacceptable to the applicants, including another organisation joining the Trust, further confirmation on funding being available and further feasibility work being undertaken. The Trust were not a restoring purchaser and intended to occupy less than 30% of the building. Further, their offer of £1.8 million was unacceptable.

49. The applicants were fully aware of the legislative framework and had a track record of working with listed buildings, including the restoration of A listed Duddingston House and the A listed former BBC HQ in Queen Street. Each case involved sensitive design intervention to secure new uses for each building to provide sustainable long term solutions. They did not assume demolition at the time of their purchase, and had anticipated a restoration of the auditorium for nightclub use involving Luminar PLC.

50. Since Rock Elim Trust did not submit a formal offer, they were not a restoring purchaser and their price was below reasonable expectations the references by Historic Scotland to the submission of accounts and of an independent valuation were irrelevant. They were never likely to compete with commercial users for the building due to their charitable status, which was why Montagu Evans concentrated on more mainstream uses for the building. Rock Elim Trust had been given an opportunity in the last three months to bring forward a formal offer, but none had been forthcoming, though they remain interested in the building.

51. Although Historic Scotland criticised the leasehold figures as being too high, Donaldsons Chartered Surveyors had previously supplied a schedule of rental comparable from similar buildings which underpinned the rental expectations of the applicants.

52. The Simpson and Brown report reviewed the condition of the building and it was clear that any restoration of internal features would involve significant costs. Around 50% of the existing auditorium interior had been destroyed. Restoration would require significant works estimated at circa £1.5 million for the auditorium and £1.75 million for the remainder of the property. No offers to date had allowed for these costs or proposed any degree of restoration.

53. Contrary to the suggestion by the SGPEs the Council was satisfied that the report prepared by Montagu Evans was completed on an independent basis. Drivers Jonas advice to Historic Scotland would appear to stand completely against the combined advice of four renowned Chartered Surveying practices with a strong Edinburgh presence in all property disciplines.

54. The purchase of the building by the applicants in 2003 was followed by a change in policy by the Council on late licensing in the centre of Edinburgh, which had not been anticipated. The applicants had a strong belief in the restoration of listed buildings wherever possible and have a track record of sensitive restoration. It made commercial sense for them to find a use for the building as it stood – ie a restoring purchaser which could make full use of the auditorium as well as the remainder of the building. In the Council's view they remained committed to finding either a restoring purchaser or a lessee of all or part of the auditorium. Offers to lease only the front section of the building had been refused. An offer had been made to the Rock Elim Trust to lease part of the building but had been declined. Without a comprehensive scheme the auditorium would effectively be mothballed and isolated from becoming part of a sustainable solution for the entire building.

55. In conclusion, neither Rock Elim Trust nor "New Victoria" had demonstrated any plans to be a restoring purchaser. Despite more than five years of interest no formal legal proposals had been forthcoming from Rock Elim Trust. New Victoria lacked any credibility and had never submitted any proposals for the building, their contribution being to mount a campaign opposing the applicant's proposals. It was not possible to complete a successful deal with a restoring purchaser unless such a purchaser was prepared to put forward a legal written offer, proof of funding, a business plan for the building's future, proposals for their restoration in full and demonstrate their commitment within a set time frame. Despite attempts over six and a half years the applicants had received nothing other than letters of interest or informal proposals.

56. The Council acknowledged that the proposals could not meet the first two tests in the Memorandum. However it was concluded that they met the third test and that partial demolition would unlock a viable future for the building and enable a scheme which contributed to the tourist hotel market, for which there was a demand.

57. This argument was compounded by the weight given to the benefits of economic growth and alternative uses in the current legislative context. The proposal met the third and fourth tests in the SHEP, that no viable alternative use for the building had been found

over six years and that the proposals would benefit both the local and the Scottish economy.

58. In the Council's view the applicant had demonstrated beyond all reasonable doubt that the building was incapable of viable use in its current form, that the economic benefits of a hotel in this location clearly outweighed any benefits of the current vacant building, or indeed other potential uses such as ecclesiastical use, and that no restoring purchaser had come forward to date.

The applicants

59. The applicants' submission in response to the call-in consisted of a report by GVA Grimley Associates with 13 appendices, and a letter from Duddingston House Properties, which was also accompanied by a summary of key events between February 2003 and the present

60. The original application for listed building consent was conceived within a well understood policy environment at that time. This was established through detailed pre-application discussions with both the City of Edinburgh Council and Historic Scotland, the purpose of which was to ascertain if there was a restoring purchaser in the market. Historic Scotland had not at any stage questioned or criticised the methodology or put forward alternatives and their retrospective criticisms now advanced were unreasonable.

61. A fully detailed feasibility exercise was carried out to establish the best viable use with the least amount of intrusion. The viability of various options was tested through a final phase of a marketing campaign that had commenced in 2003 and had now run for 6½ years. The conclusions of this detailed exercise led to identification of the current proposals.

62. The key policy tests were identified and addressed. This had included consideration of the up to date policy context that changed between the submission of the applications and the present date. Specifically, fully detailed technical reports were prepared on significance, condition, economic benefits and scope for alternative uses.

63. The marketing exercise, with the purpose of identifying and attracting a restoring purchaser or lessee, was carried out with the full involvement of the City of Edinburgh Council and Historic Scotland.

64. The applications for planning permission and listed building consent were accompanied by detailed technical supporting information, including a Planning and Design Statement, a Marketing and Economic Statement and a Consultation Statement which detailed a stakeholder consultation exercise which showed considerable support for the project.

65. The Planning and Design Statement provided a detailed timeline showing the history of the property since its purchase in 2003, demonstrating that the application was the outcome of a comprehensive effort to market the property to restoring purchasers/lessees, while at the same time exploring the potential for redevelopment should this prove fruitless. Previous proposals were reviewed, and a forensic examination of less intrusive options carried out. The initial proposal for the building had been for conversion of the building for

Luminar Leisure, but this was abandoned in the light of the Council's restrictive licensing policy for this area.

66. No other germane matters had been raised by Historic Scotland or their advisers.

67. No assistance or contribution had been made by Historic Scotland in identifying a restoring purchaser, other than to refer back to historic discussions with the Rock Elim Trust.

68. The proposal had been fully considered against the previous policy background, namely NPPG18 and the Memorandum. It had now been assessed against SPP23 and the SHEP, and the applicant contended that the application positively complied with two of the required tests in the new SHEP, although compliance with just one was required. The applicant reviewed the policy situation both in relation to NPPG18 and the Memorandum and to SPP23 and SHEP. The essence remained similar – there was a presumption against demolition unless it had been demonstrated beyond reasonable doubt that every effort had been made to retain and re-use the building. But there was a policy acceptance that in certain circumstances demolition may be allowed.

69. In terms of SPP23 it was accepted that no listed building should be demolished unless it could be demonstrated beyond reasonable doubt that the building was incapable of further use. Consideration of applications for demolition should be considered by planning authorities on the basis of an understanding of the importance and condition of the building, the impact on adjacent listed buildings, the scope for alternative uses, the adequacy of effort made to retain the building in use and the extent to which the community would benefit from a redevelopment. All these requirements had been addressed by the applicants.

70. It was acknowledged that in terms of the first two tests in the SHEP the building was of importance, as acknowledged by the Conservation Plan produced by Simpson and Brown on behalf of the applicants, though not unique, and was not incapable of repair, though the costs of restoration would be significant. On the third test, evidence had been presented without contradiction that the proposals will bring economic and wider benefits. The EKOS report submitted to the Council and attached to the applicants' submission, which followed standard methodology in the HM Treasury Green Book, concluded that the proposal would create 270 jobs at local level, and that wider benefits and jobs would be created. It predicted £9.7 million of Gross Value Added, with an additional £10 million plus from construction. It would meet an identified demand in the hotel and creative industries sector and would contribute directly to strategic objectives set out in current Scottish and Local Government policies. Historic Scotland seemed reluctant to acknowledge that the proposals would deliver significant economic and community benefits, and their analysis did not properly reflect the requirements of the third SHEP test.

71. On the fourth test the property had been marketed at price reflecting its location and condition to potential restoring purchasers for a 6½ year period but without success. There had been some offers, but none from a party proposing restoration of the property either as a lessee or tenant. The applicants were well versed in the requirements in such cases, having been a restoring purchaser in other cases. The scope, form and content of the marketing exercise carried out in 2007 were fully discussed with the Council and Historic

Scotland. This discussion included the contents of the sale particulars, a suitable rental level against which to gauge offers, specific target operators, the time period for marketing and the closing date. All bids/expressions of interest were shared with the Council and Historic Scotland, a preferred party was identified (Fat Cat Productions) and the underbidders rejected. Historic Scotland's suggestion that there had been several significant offers was incorrect, and their suggestion that the financial expectations of the applicant were too high ignored the fact that there were no qualifications on the marketing exercise. The criticism of the applicants in the Drivers Jonas report for not selling the building to interested groups including the Rock Elim Trust was incorrect as no formal offer had been made by them.

72. A proper valuation exercise had been carried out and could be relied on. While criticised, this had not been challenged with any actual evidence. The conclusions from a fully detailed 6½ year marketing exercise were that there had been no offers from a restoring purchaser or lessee.

73. While 17 notes of interest were received during the marketing campaign only six bids were received. Two were from religious groups – Encounter International offered 23,152.98 dollars, while The Elim Trust Corporation of Cheltenham offered £1.8 million. Ensco 1654 Ltd (The Consortium) offered £3.4 million, subsequently reduced to £2.75 million but without indicating their proposals for the site. They were not considered a credible purchaser. Fat Cat Productions offered £4 million with a proposal to use it as a large events venue with conference and exhibition uses, but ultimately withdrew their offer. Two offers for a lease were received, from Barracuda Pubs and Bars at £95,000 per annum and from The Rex Cinemas for £100,000 per annum. Both were considered unrealistically low bearing in mind the rental offer of £266,000 per annum detailed in the particulars, based on £10.00 per square foot, a figure agreed with the Council.

74. The Rock Elim approach was rejected because they were not a restoring purchaser, did not want more than 25% of the whole building for their operation, and were unable to demonstrate funding for their offer, which itself was unacceptable. They were not interested in taking a lease of the building, had never demonstrated “proof of funding” and had not made any further offer. Although the Rock Elim church's letter to the reporter in August 2009 purported to state clearly the position of the church, the principal issue was that their position was not clearly stated and understood. Notwithstanding the difference in market value between the parties, their proposals did not involve restoration and would only utilise part of the subject property. They had not taken up the opportunity to carry out further necessary surveys and no proof of further funding had been provided. Although the applicants were happy to continue a dialogue, the church had not crystallised its interests by addressing these deficiencies and providing a formal offer at market level. The change in position of AHSS in relation to the application was based upon a mistaken interpretation of the Drivers Jonas report that an alternative purchaser existed, when that was not the case.

75. Historic Scotland were completely involved in the decision making process along with the Council in 2007 when a closing date for offers for the building was agreed. Minutes of that meeting record that there was agreement to reject Rock Elim Trust's offer in favour of another party.

76. Representations by Mr D Kipling and Mr G Wear made reference to historic interest in the property but no new offers had been made since then.

77. There had been no direct approach from the New Victoria Trust, though the applicants had encouraged this group to submit a formal offer.

78. Two valuation reports of 2003 and 2008 had been lodged that confirmed an open market valuation of the property. The fact that the building was listed was a consideration for valuation but did not affect the general approach, which was laid down in the RICS Code for Valuation. The Drivers Jonas report prepared for Historic Scotland on valuation and marketing matters made several criticisms of the applicants' approach. They raised queries on the marketing process, price, value and other matters, but without making clear what parameters should have been applied to the process of marketing and consideration of bids. They had not carried out any independent valuation and so it was not clear what their basis was for criticism of the valuations relied on by the applicants. The Council had however commissioned an independent view on valuation from their Economic Development Surveyor in 2006 (referred to in the Marketing and Economic Statement) that suggested a value of £2.25-£2.6 million for the property excluding the land to the rear which has planning permission for residential development and estimated by the applicants to be worth £450,000. This independent evidence which supported the applicants' case should be given compelling weight. The criticisms by the Scottish Government's Principal Estates Surveyor failed to give any views on appropriate parameters which should have been applied, and reached conclusions on listed buildings policy matters which appeared to be outside its expert remit.

79. Valuations for lending purposes were carried out under the same methodology as they would be for a developer. While the applicants were aware of valuations as a guide to property asset values they were independent of any decision by the applicants on whether to buy or dispose of the asset. The valuations played little part in the decision making process due to other factors and in particular whether any offer was from a restoring purchaser.

80. The building had been marketed by two different sets of chartered surveyors since April 2003 but during this time the applicants had never received a formal conditional offer to purchase the building from a restoring purchaser which subsequently led to instructing solicitors.

81. Considerable support existed from other organisations in addition to the Council where the social and economic benefits of the proposal were evident. The proposal would form a long term sustainable future for the building which would be of benefit to the local economy and provide an asset to the local economy as well as the city.

82. Taking these reasonable conclusions, the applicants believe that listed building consent should now be properly approved.

83. The applicant's submissions in response to the call-in were accompanied by 13 appendices mainly comprising letters, meeting minutes and emails detailing the discussions held with the Council and Historic Scotland, and the 2008 Colliers CRE valuation which had previously been withheld as confidential.

Interested persons and parties

84. A substantial number of representations were made to the Council in relation to the application for listed building consent and further representations made after the application was called in. The applicants have also forwarded copies of letters and emails addressed to them in support of the proposal.

85. **Councillor Cameron Rose** urged that the matter should be resolved. The site which was a potentially huge resource to the community had been inactive since 2003 which blighted the local community.

86. **Architecture + Design Scotland** pointed out that the loss of a historic cinema which was an integral part of this part of Edinburgh and contributes positively to the mix of uses in the area would be unfortunate. However the proposals were interesting in design terms, and A+DS made a number of comments and suggestions in relation to the replacement scheme.

87. **Lynn Hendry** on behalf of the Rex Cinema in Berkhamstead expressed interest in submitting a business plan to the owners of the Odeon with the intention of re-opening it as a one-screen cinema preserving and restoring the interior.

Opposing

88. **The Theatres Trust** objected to the application as the national body for theatres and a statutory body established by the Theatres Trust (Scotland) Act 1978. Only this cinema and the Finsbury Park Astoria and Brixton Academy in London survived with any significant features of 'atmospheric style'. It was a landmark building and something the Council should be keen to preserve. They noted local concern about its loss and pointed to Edinburgh's Theatre Strategy to retain and develop its cultural pre-eminence. It endorsed the objection of the Cinema Theatres Association.

89. **Cinema Theatre Association**, the national body for the study and protection of cinema buildings, praised the Conservation Plan as an excellent piece of work, but protested that the current plans for demolition were being progressed at the same time. A model for a way forward was that taken to regenerate the Granada Clapham Junction, where the restoration of the auditorium of a Grade II listed building was funded by the construction of flats in the stage and roof space. The applicants, while mentioning this option did not appear to have investigated it. The marketing of the building had been successful, but the applicants had been unwilling to agree a reasonable purchase price. An offer by the operators of the Rex Cinema in Berkhamstead to lease the building had been unreasonably rejected. The proposals involved the retention of a tiny proportion of the building and the majority lost. Further investigation of split-site options should take place, and the Council should consider compulsory purchase.

90. **The Architectural Heritage Society of Scotland** stated that the demolition of the main auditorium would be a great loss to cinema heritage, but its retention was only of value if the Pompeian auditorium was restored to its 1930, 2008 seat capacity. If the Council accepted the economic argument of the redundancy of the site as a cinema, the current application was of marked quality and far superior to those that had gone before.

91. In a later letter of August 2009 the Society stressed that the argument for demolishing the atmospheric auditorium would have to be watertight and the applicant should prove that retention of the auditorium was economically unviable. Since the Drivers Jonas report prepared for Historic Scotland made it explicit that this case was not made, and an alternative purchaser existed offering a price that reflected market value, the Society withdrew what had been perceived as support for the applicants' project and indicated that the application failed to meet the requirements of SHEP paragraphs 3.44 b, c and d. The Scottish Government was encouraged to refuse consent.

92. **Save Britain's Heritage** objected in the strongest possible terms to the proposed demolition. The Odeon was arguably the finest building of its style in Edinburgh and only one of three in Britain to survive relatively intact. No consideration had been given to the long term benefits to the community and city of retaining the building.

93. **Rock Elim Pentecostal Church** (full title The Elim Foursquare Gospel Alliance) had assets less liabilities of in the region of £120 million. They operated over 500 congregations across the UK including the local congregation at Edinburgh. Elim employed nearly 1,700 people. They considered that the conclusions in the Council's report concerning the marketing of the site and of the demonstration that the building was not capable of accommodating a viable alternative use in its original form were incorrect. They had discussions with the applicants, one of the primary features of which was the consistency with which the asking price was raised after offers had been submitted.

94. Offers had been made of £1.4 million in May 2004 and £1.8 million in September 2007, in each case rejected. DM Hall had undertaken a market valuation of the subjects for the Rock Elim Trust in August 2004 in a buoyant market and at that time had concluded that with planning permission for residential (which would be controversial and likely to be opposed) a purchase price of £3 million would be reasonable. The only other way a price approaching the asking level could be obtained was by a substantial licensing use of the property, which would also be contentious. They considered that the premises would appeal to an Edinburgh institution or specialist purchaser and that negotiations would generate a price in the order of £2 million maximum, with around £600,000 being underpinned by the existing residential planning permission. Accordingly they judged the capital market value to be £2 million.

95. Elim's proposals did not involve returning the building to its former glory but enabled it to be refurbished to a good standard and re-used in its existing configuration. Their proposals were for the full utilisation of the building, creating a centre which included church, arts and community involvement. They would establish a centre for the arts, having an agreement already in place with an established arts organisation Cutting Edge Theatre to develop a wide-ranging programme. Screen 4 would be adapted and extended to provide a permanent 300 seat theatre. They would establish a commercial cinema within the building utilising screen 2 and screen 3 would be adapted as a multipurpose auditorium for community, conference or theatre space. Screen 5 would be adapted to have a level multi-use gym floor. Screen 1 would be used by the local church for conference purposes, and would be available to let when not in that use. The upper floor cafe would be refurbished and used by the church as well as for rent. The north side of the lobby would be let to a coffee shop operator, the crush lobby refurbished as circulation space and the mezzanine office suite would be administrative offices for the church.

96. **Cutting Edge Theatre Productions** confirmed their interest in and commitment to providing an active arts programme and community programme in the building in conjunction with the Rock Church.

97. **Tom Pate** criticised the manner in which the application had been considered by the planning committee and indicated that a business consortium was in the process of putting together a fresh proposal to take over the Odeon and manage it commercially with the auditorium intact. He urged a public inquiry.

98. **Grahame Wear** on behalf of **Save the Odeon Ltd** wrote after the call in to summarise three years or so of negotiations with the applicants which demonstrated their serious intent. Mr Wear had offered to join with Dale Gibson to push forward a project for the former Odeon cinema with the objective of establishing a premier cinema and multi-venue arts centre which would be linked with the city, city events and the community. His letter was accompanied by a presentation describing the intention to reinstate and enhance the original design principles, to establish the Odeon and support areas as the primary cinematic experience in Scotland, to establish a programme of art and media based activities and ventures, and maintain the art-deco auditorium by profitable commercial enterprises that would provide enough surplus profit to sponsor cinema events and cover running costs. All major areas of the building would be restored including the original proscenium arch, and the auditorium would seat 500 and have the ability to host conferences and banqueting.

99. A letter from the Council to Mr Wear illustrated their general support for a scheme which demolished the area behind the proscenium arch and built an aparthotel fronting Buccleuch Street with further apartments constructed above the auditorium. An example of a successful scheme of a similar nature was given of the Granada Clapham Junction, London, where a Grade II listed cinema had been converted with flats built in the roof space and unused stage areas with the significant auditorium preserved. Projected costs indicated that provided the Odeon was sold at the right price it could be profitably developed as a cinema while preserving the building's architectural integrity, and a draft Operating Profit and Loss table showed a projected five year income stream. The Cinema Theatre Association submission to the Council was also attached as evidence of their support.

100. Copies of correspondence were attached indicating the willingness of the company to offer £3 million (made before the closing date) and subsequently £3.4 million, and responses from the applicants rejecting those offers. Also attached was a copy fax dated September 2007 from HBJ Gateley Wareing on behalf of ENSCO 165 Limited (The Consortium) offering to purchase the former Odeon Cinema site for £2.8 million.

101. **David Kipling** in an email following the call in referred to approaches made to the applicants to acquire the site in order to convert the rear to serviced apartments for use by Staycity (an apartment operator). Two formal offers were made via his solicitors including one within the deadline to a closing date, to which no reply was received.

102. **Gordon Barr, Sana Bilgrami, John Need, Gerry Painter and Tom Pate** as **The New Victoria Group** wrote an open letter to the press demanding a public inquiry.

103. **Theatre Enigma** urged that this wonderful building should be preserved and its continuing use for entertainment encouraged.

104. **Mrs Claire MacGregor** asked that the Odeon be saved. It was a fine Art-Deco cinema and deserved better than a dreary 250 bed hotel.

105. **Councillor Lesley Hinds** urged that further consideration be given to alternatives to demolition.

106. An open letter to The Scotsman signed by **Sarah Boyack MSP, the Rt Hon George Foulkes MSP, Robin Harper MSP, Ian McKee MSP, Shirley-Anne Somerville MSP, Councillor Steve Burgess, Councillor Lesley Hinds, Gordon Barr of the Cinema Theatre Association, Sana Bilgrami, a film maker, John Need, a photographer, Gary Painter of the Cinema Theatre Association, and Tom Pate a retired theatre manager** following the Council's decision called for a public inquiry.

107. **Shirley Anne Somerville MSP** expressed the view that this piece of Scotland's architectural heritage should not be demolished before it was clear that every alternative avenue had been fully explored.

108. **Councillor Steve Burgess** writing after the call in of the application pointed out that the Odeon could never be replaced if it were demolished and urged rejection of the application.

109. An online petition published by the **New Victoria Group** and further petitions forwarded by **Sana Bilgrami and John Need** urged that the auditorium of one of the UK's most beautiful buildings should not be demolished. The building had potential for use as a cinema or theatre as an exciting national hub. There had been no feasibility study of its re-use. The online petition (hosted by **New Victoria**) **currently** has nearly 5,500 signatures on www.gopetition.co.uk/petitions/old-odeon-cinema-building.html

110. **Vince Finlayson** of 'Dr Blockbuster online' indicated that he had been campaigning for some time for the Odeon not to be demolished.

Supporting

111. **Visit Scotland** supported the proposals which would support tourism in the city. The development of an art hotel would be a unique addition to the quality and choice on offer to visitors.

112. **Joyce Taylor**, an artist, enthusiastically supported the Odeon's redevelopment to provide an arts hotel which would transform an old and redundant building into a vibrant and exciting addition to the arts and cultural offering within Edinburgh.

113. **Charles McKean**, Professor of Architectural History, University of Dundee, described the difficulties of re-using the large shells of 1930 cinemas and expressed the view that the issue must be to safeguard the memory of the building and protect those aspects of its character which matter most. The Zed concept was one of the most imaginative schemes he had come across.

114. **Tartan Silk**, an agency specialising in hospitality and tourism clients welcomed the ZED concept as an exciting hotel offering in an area of the city which would benefit from such investment.

115. **The Cockburn Association** welcomed the initiative demonstrated in the application. The retention of the facade, crush hall and the building's envelope were welcomed. The inspired mix of uses in the new development were welcomed, together with references to the cinema's former existence. All these benefits compensated for the loss of the proscenium arch.

116. **Edinburgh Convention Bureau** as the lead organisation for business tourism in Edinburgh considered that the art hotel would augment the city's hotel stock and complement the business tourism product with quality accommodation.

117. **The Scottish Tourism Forum** similarly supported the art hotel concept..

118. **Edinburgh Chamber of Commerce** considered that the applicants had worked hard to find solutions for the redevelopment of the property since it failed as a cinema in 2003. Edinburgh Filmhouse fulfilled the role of arthouse cinema in Edinburgh and only survived through public subsidy. Any further delay would place extended financial burdens on the developer and undermine their efforts to secure an acceptable and regenerative use for the building. The drawings showed an imaginative design to preserve the best of the building. Historic Scotland's refusal to upgrade from Category B to A indicated that it was the internal detail and facade which were of interest rather than the bulk of the shell. The proposal would meet extensive demand for accommodation for mature students and migrant workers.

119. **The Scottish Council for Development and Industry** supported the art hotel concept which had considerable merit and should be approved. It would both provide additional high quality hotel accommodation and offer a platform to Scottish artist and creative talent close to the city centre.

120. **Professor Ian Howard, Principal of Edinburgh College of Art** supported the proposals for the former cinema, which would retain and enhance as much of the building as is economically viable. The applicants had demonstrated there was no viable use for the cinema's restoration and the College had worked with the applicants and their architects to envisage a collaboration which would ensure best quality interior design.

121. **The Town House Company**, a collection of Edinburgh boutique hotels welcomed the proposals as an innovative Art Hotel product.

122. **Napier University** (through Colin Bryce, special adviser to the vice-principal, welcomed the scheme as an innovative addition to the relatively limited stock of Edinburgh-based venues supporting the arts, and an important contribution to the regeneration of Southside.

123. **The Scottish Council for Development and Industry** wrote in support of the proposal, particularly its Art Hotel and conference concept, as did **Scottish Enterprise, Napier University** and **Edinburgh Convention Bureau**. **W D MacDonald**, former chairman of the **Scottish Property Federation** also expressed his support and described

the proposals as imaginative and consistent with a long term solution which had both public and community benefit.

Reasoned conclusions

124. Proposals affecting this listed building must be viewed firstly against the statutory requirement of s14 of the Act to have regard to “the desirability of preserving the building ... or any features of special architectural or historic interest which it possesses”. The extent to which preservation is desirable can only be judged by reference to all the factors of the application.

125. Since this application has been called in for the decision of Scottish Ministers it must be assessed against the policies of the Scottish Ministers as set out in SPP23 and SHEP. At the time that the application was considered by the Council the national policy guidance in force was NPPG18 and the Memorandum. Both of those documents have been superseded by SPP23 and SHEP respectively, and so I do not refer to the policies as previously formulated, though it has been helpful to have the consideration given by all main parties to them, as well as to the up to date position. Before looking at the proposal in the light of national policy I briefly examine the policies of the Council.

126. The application, while involving the restoration of the facade and the front section of the building including the first floor cafe and the crush hall together with the retention of the brick shell of the building proposes the demolition of the whole of the interior of the auditorium and the Buccleuch Street shelter. The latter is not contentious, but since the proposal would involve substantial demolition of the listed building it is undeniable that it would harm the character and architectural interest of the building in its existing state. It would therefore conflict with Policy ENV1C of the Edinburgh and Lothians Structure Plan which indicates that development which would harm the character of listed buildings should be resisted. It would also diminish the building’s architectural interest and thus conflict with Policy CD2 of the adopted Central Edinburgh Local Plan which I have set out above. However neither of these policies assist in the difficult question posed by this application of whether the point has been reached where other considerations outweigh the desirability of retaining the listed building.

127. That question is addressed by more recent local policy taken into account by the City of Edinburgh Council, namely Policy ENV1 of the emerging Edinburgh City Local Plan. This plan is close to being adopted, having been the subject of a local plan inquiry and of a subsequent report, but cannot yet be afforded full weight. Nevertheless this policy is similar in tone and intention to Ministers’ policy set out in SHEP. It points out that support for the total or substantial demolition of a listed building will only occur in exceptional circumstances, and will take into account a number of factors which reflect those of the SHEP policy. I turn therefore to examine the proposals against national policy requirements.

128. SPP23 states at paragraph 32 that the primary consideration in the determination of applications for listed building consent is the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. It goes on to say that in general, listing should not prevent sympathetic adaptation and

innovative solutions may be appropriate providing the special interest of the building is protected. In matters of detail however it defers to SHEP.

129. SHEP makes no reference to the quality of any scheme for replacement of a listed building either as a balancing factor to be placed against the harm caused by demolition or as a matter to be considered after the decision on demolition has been made. The application for planning permission which the Council are minded to grant remains before them until such time as a legal agreement is concluded, but is not before me or before the Scottish Ministers. Nevertheless the ideas and concepts which underlie that scheme are important to an understanding of the proposal as a whole and are set out in the applicants' Planning and Design Statement. The proposal for an arts-based hotel and post graduate accommodation are welcomed by a number of the supporters of the scheme, and the details of the scheme are clearly recognised as an improvement on earlier proposals for the site.

130. Although in the main the reference by parties to the tests has quoted from paragraph 3.50 of SHEP, consideration must not be confined to that paragraph. The remainder of this section of SHEP also provides valuable pointers relevant to this case.

131. Paragraph 3.40 emphasises that once they are lost listed buildings cannot be replaced and that their special interest can be removed by inappropriate alteration or demolition. It therefore states a presumption against demolition or other works that adversely affect any building's special interest which underpins later paragraphs. However it is recognised at paragraph 3.41 that listed buildings, like other buildings, require alteration and adaptation from time to time if they are to remain in beneficial use. In most cases such change, if approached carefully, can be managed without adversely affecting the special interest of the building.

132. Paragraph 3.42 of SHEP says that applications should demonstrate that in arriving at a strategy for intervention, the importance of the building has been clearly understood and those features which contribute to its special interest have been identified. The Conservation Plan produced by Simpson and Brown for the applicants is a careful and authoritative review of the building, and has been used as a reference point by many of the parties. The elements of the building which it ranks as of considerable interest are the front facade of the building, the auditorium and the original proscenium arch, the balcony and the area of balcony off the cafe. Of these only the facade would be retained under the current proposals. Since Simpson and Brown's report clearly identifies the features of special interest it is disappointing that the proposal puts forward the demolition of some of the most important of those features. This may at least in part be attributable to the fact that the Conservation Plan was not produced until late in the application process.

133. Paragraph 3.49 of SHEP goes on to require planning authorities in reaching decisions to consider whether there are other options which would ensure a continuing beneficial use for the building with less impact on its special interest and whether there are significant benefits for economic growth or the wider community which justify a departure from the presumption set out in paragraph 3.40.

134. Paragraph 3.43 of SHEP says that where proposals involve significant intervention, which is undeniably the case here, evidence that less intrusive options have been considered should be provided.

135. SHEP at paragraph 3.44 sets four tests for the consideration of proposals for the demolition of a listed building on which applicants will be expected to provide evidence, and paragraph 3.50 which I set out in full at paragraph 15 above indicates that planning authorities should only approve such applications where they are satisfied that one of the tests is met.

136. The applicants recognise that the first test, namely that the building is not of special interest, is not met. The inclusion of the building in the statutory list as Category B is itself sufficient to demonstrate that the building is of special interest and no arguments are made by the Council or the applicants to the contrary.

137. As a side issue, while the proposal to list it as Category A has yet to be progressed by Historic Scotland, there is recognition among the representations that its upgrading is merited. Indeed it seems to have been prompted by information from the Cinema Theatre Association who themselves made representations on this application. Historic Scotland in their consultation response on the application indicated to the Council their view that the building appeared to be of national importance. Although Historic Scotland's submissions on the call-in indicated that both the applicants and the Council agreed with its upgrading, the applicants in correspondence with Historic Scotland had clearly indicated that they did not consider the upgrading was merited, and repeated this in their response to Historic Scotland's call-in submissions. This response also contains criticism of the lack of discussion with them prior to the decision to consider upgrading, but it is clear that discussion and consultation with them has taken place since the initial indication, and no final decision on listing has been made. It is not for me to comment on the proposed upgrading - the fact that Historic Scotland are considering this is a material factor, but it cannot be viewed as a *fait accompli*, and this application must be judged against the present status of the building rather than any putative future status.

138. As a further criticism the applicants expressed surprise that despite claims of its high levels of significance the cinema did not merit inclusion in the 2009 Historic Scotland publication "Spotlight on Scotland's Cinemas". However from my reading of it that leaflet provided information on buildings whose future was secure and which could be viewed by readers of the leaflet. The omission of the Odeon is understandable when the application affecting it was still under consideration.

139. The Conservation Plan produced by Simpson and Brown for the applicants in support of their application is helpful in assessing the level of significance of various aspects of the building and in setting it in context. The original 1930s interior fit-out of the auditorium, its 1930s proscenium and aspects of the circle level interior are described as of considerable interest. As the applicants point out, a significant amount of the original interior has been lost to the various alterations carried out to the cinema since the 1930s. The most recent deal with changing patterns of cinema going and attendance through the subdivision into five cinemas, but in earlier times significant changes to the interior of the auditorium were made to accommodate technological changes such as cinemascope. The Simpson and Brown report describes the auditorium as of considerable significance not

only to Scotland but to the UK and recommends its restoration to its original appearance and decorative scheme where possible.

140. As the applicants pointed out this cinema is not unique but it is certainly rare – it is agreed that only two other examples of ‘atmospheric style’ on this scale exist in the United Kingdom. The other remaining example in Scotland at Campbeltown is a much smaller building.

141. The applicants clearly regard as significant the retention and restoration of the facade, foyer and crush hall of the cinema as part of their scheme and hence as part of the application for listed building consent. While these elements of the building are important and their retention is desirable in my view the main architectural and historic interest of the various elements of the building lies not primarily in their intrinsic merit but in the fact that they are components of a 1930s purpose built ‘atmospheric’ cinema. As individual components they have some interest, but that interest is enhanced while they remain part of a complete building. The retention and restoration, for example, of the facade is clearly preferable to its demolition and it would remain of interest as an unusual example of the use of faience and as a contribution to the street scene with historical associations as having formerly been the entrance to a cinema, but it seems to me unlikely that it would remain of “considerable” interest following the demolition of the main auditorium, since it would have lost its context. Similarly the foyer, cafe and crush hall, even if restored to their former appearance as examples of interiors of the period, would no longer be the prelude to the experience of the atmospheric auditorium, and so would be of lesser interest.

142. Although the retention of the plain brick shell of the auditorium forms part of the scheme the major interest in the auditorium lies in its interior, which would be lost. As with many cinemas the brick box was given no external ornamentation, presumably because of its position in the backland. Its retention, while keeping an echo of the former building, can be given little weight when compared with the loss of the interior.

143. The applicants, who have an acknowledged track record in dealing sympathetically with listed buildings, have characterised their brief to MAKE architects as to retain as much of the building as possible. It is not clear to me whether the brief or their discussions made any distinction between different parts of the building, and the Simpson and Brown report was not available at that time. The brief led to a scheme which retained those elements of the building towards the Clerk Street frontage and lost the large envelope of the auditorium at the rear. It may be that a different brief which specified the retention of the most important elements of the building might have led to a different scheme. Objectors have referred to a scheme for the listed Granada Clapham Junction, currently I understand under construction, which involved spanning over the important auditorium to create new development space and on which they had obtained the Council’s favourable views. Certainly nothing akin to that scheme seems to have been contemplated, and consequently I have no information from the applicants on whether they consider such an approach feasible in the circumstances of the Odeon.

144. The applicants have pointed out that in an earlier architectural competition none of the three entrants came up with a scheme that proposed the retention of the auditorium. Whatever the reasons for that, the current scheme must be viewed against the presumption against the demolition of a listed building. It does appear to me, however, that when the

current scheme was decided upon the importance of the auditorium to the special character of the building was not appropriately stressed and that consequently not all the possible alternatives to demolition have been explored.

145. In summary, therefore, the first test is not met, and the examination by all parties of the importance of the building has demonstrated that the proposals for partial demolition would result in the loss of some of the most significant elements of the building.

146. The second test of SHEP is that the building is incapable of repair. It is accepted by the applicants that the Odeon is in a reasonable state of repair given that it is not in use. Although at my site inspection there was evidence pointed out to me of some windows on the Clerk Street frontage being open or unlocked, leaving the building at risk, with the possible implication that this has been deliberate, I have found no evidence that this is the case. There was some reference in representations to water penetration but my inspection showed the building to be generally unharmed by its lack of use for some six years. The applicants in dealing with this test agree that repair is not uneconomic but point out that the costs of restoration would be significant. Those costs are more relevant to the fourth test, which I deal with below.

147. The third test is that the demolition of the building is essential to delivering significant benefits to economic growth or the wider community, and there can be no doubt that without demolition this specific scheme could not be achieved and its associated benefits realised. I also accept the judgement of the Council and of others that the quality of the MAKE scheme which would replace the building is itself a benefit. However my understanding of this test is that it sets a higher standard than merely the demonstration that the defined benefits could only be achieved by the demolition of the building.

148. The requirement for benefits to be significant appears to me to be reflected in the third test of Policy ENV 1 of the emerging City Local Plan, which seeks to balance the loss against the public benefits derived from allowing demolition. The test must be seen in the light of the presumption in paragraph 3.40 of SHEP against demolition or other works that adversely affect the building's special interest thus emphasising that it must also be demonstrated that the benefits outweigh the importance of retaining the building.

149. No definition or explanation of the term economic growth is provided in SHEP, and it cannot be assumed that only national economic growth is intended. The research by Ekos Consulting and the applicants' own survey forwarded to the Council in support of the application showed local support for the arts hotel concept and showed that the development (on-site and off-site) would generate approximately 270 gross jobs at the local level which after taking into account additionality, leakage, replacement and multipliers equated to 120 jobs at local level and 110 jobs at national level. Annual GVA generated would be about £5 million at local level and £2.9 million and national level. There would thus be benefits to both the local and national economy from the development. Clearly the new development proposed would also provide facilities for the local community which are currently absent or not available here. The involvement of Edinburgh College of Art in the concept, and their support for this proposal, together with that of many local arts and business organisations provide evidence of benefits for the local community.

150. Additionally the building in its present state makes little local contribution and its empty and uncared for appearance detracts from the street scene and attracts graffiti and fly-posting. Its renovation would clearly be of benefit to the appearance of Clerk Street. It is notable however that the Council's Development Management sub-Committee report concluded that the surrounding area was vibrant and on a principal route into the city. Although the proposal would reintroduce an active frontage to Clerk Street and introduce an active frontage to Buccleuch Street it concluded that the immediate area was not reliant on the development of this site as a catalyst for local employment or regeneration. It went on to say that if the Clerk Street frontage were left in its current derelict condition this may have a knock-on effect on the units surrounding it and the vitality of this part of the shopping centre, and that the proposals would create an attractive and vibrant use at this location which would support the local shopping centre and could be a catalyst for the re-invigoration of the area. However the judgement that the area is not reliant on this development as a catalyst for regeneration is in my view an important one. In the context of this application while I recognise the welcome contribution the proposal would make to economic growth and to the community it would not be on a significant scale in terms of the SHEP test.

151. It is equally true that other proposals, whether for the restoration of the building or for the re-use of the building in its present state, would also bring benefits provided they were viable. Paragraph 3.41 of SHEP says that in most cases change, if approached carefully, can be managed without adversely affecting the special interest of the building. The first choice, therefore, must be for less damaging uses to be explored. Paragraph 3.49 of SHEP, which deals with proposals for alteration or adaptation of a listed building, and thus presumably with proposals less damaging than full demolition, requires planning authorities to consider whether there are other options which would ensure a continuing beneficial use for the building with less impact on its special interest. It would be illogical if the same consideration were not given to proposals such as this involving substantial demolition.

152. Other potential uses for the building which do not involve demolition have been put forward by Rock Elim Trust, by The Consortium and by Save the Odeon Ltd. All appear to involve a continuing theatre or cinema use within the building with other religious, community or assembly uses. It appears to me that it has not been demonstrated that uses of the building without significant demolition could not also bring benefits for the local community. It has thus not been demonstrated that demolition is essential to realising benefits to the local or wider community, or that those benefits would be significant in the context of this application and this building.

153. The final test is that the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period. I first note, though this is not a point argued by Historic Scotland, that for the test to be met both parts must be satisfied – ie repair must be economically unviable and marketing in the terms set out must have been unsuccessful. There are also a number of elements to the second part of the test. The property must have been marketed for a reasonable period; it must have been marketed at a price reflecting its location and condition; and it must have been marketed to restoring purchasers.

154. While the first element of the test refers to repair and not to restoration, the marketing must be to potential restoring purchasers, which I interpret as requiring applicants to have aimed their campaign at those who have the potential to restore the building. There has been no criticism that the marketing campaign did not have those aims, but bearing in mind that the reference in section 14 of the Act is to preservation rather than to restoration it does not follow that offers from parties with the intention of preserving rather than restoring the building should be rejected. The proposals put forward by the Rock Elim Trust would not secure the restoration of the auditorium and the applicants are correct to describe them as not in these terms a restoring purchaser. They propose to utilise the structure in its existing multi-screen configuration and they appear to have no intention of proceeding to a restoration of the original auditorium. Although their representations indicate the intention to spend ‘a 7 figure sum’ on bringing the building into use for their intended purpose, their occupation of the building would seem likely at best to result in it being preserved in its present state, with the result that elements such as the original proscenium would remain unseen. However preservation of this sort would be preferable to demolition, and represents an alternative to demolition such as is suggested for exploration in paragraph 3.49 of SHEP. Their interest in the building should not therefore be rejected on this ground and the applicants’ indication that the offer from Rock Elim Trust was unacceptable because they were not a restoring purchaser is in my view incorrect.

155. It is clear that full restoration of the building would involve largely dismantling the internal alterations which have been carried out in the past and would be expensive, but putting aside for one moment the cost of acquisition, the repair of the building in its existing state for a use which would not require major disruption of the fabric is not alleged by either the applicants or the Council to be uneconomic.

156. The report by Montagu Evans commissioned by the Council identified a number of potential uses for the building, including licensed properties, cinema, bingo hall, student accommodation, residential and hotels. The latter three would clearly not involve the re-use of the building in its existing state. I note that after concluding that the Council’s resistance to even partial demolition and to a late licence made the potential for the building very limited the report did not appear to consider the possibility of less commercial uses such as the mix of religious and community uses proposed by the Rock Elim Trust despite being aware of their interest and their willingness to spend money on repair. While it may well be argued that the lack of proceedable offers for the building for commercial operations was evidence of the lack of economic viability of its repair and retention, the continuing interest of Rock Elim Trust runs counter to that supposition.

157. On the question of the adequacy of marketing, Montagu Evans concluded for the Council that the series of marketing campaigns which had been undertaken were extensive and thorough and there can be no doubt that the building has been on the market for a long time. The applicants’ Marketing and Economic Statement shows that interest has been expressed in the building by many parties during its marketing, including The Scottish Chamber Orchestra, night club operators, Festival venue operators, potential entertainments and live music promoters and others, but few have proceeded to a formal offer. Following the marketing campaign in 2007 6 bids were received including those from Rock Elim Trust (who had previously made a lower offer which was rejected), ENSCO 165 Ltd (the Consortium) and Fat Cat Productions. The latter was significantly the higher offer, at £4 million, and was accepted but was later withdrawn. The applicants’ submissions give

no indication that they then reviewed the acceptability of offers from other bidders. The GVA Grimley report on the marketing campaign attached to the Marketing and Economic Statement recommended the applicants to re-market the property in the event of negotiations with Fat Cat Productions being unsuccessful, but that did not happen. The applicants' comments that The Consortium were not a credible purchaser are not substantiated other than that they had refused to clarify the proposed use for the building and it is not clear on what grounds other than price their offer was rejected. I have dealt above with the indication that Rock Elim Trust were not a restoring purchaser. The applicants' reasons for not pursuing further these lower offers are not compelling.

158. Other parties have claimed at various stages in the proceedings to have offered to purchase the building. Correspondence from Graham Wear indicated that he had joined forces with Dale Gibson, and that Save the Odeon Limited had made an offer of £2.8 million to the applicants which had not been accepted, but this has not been recorded by the applicants. Other correspondence include in the submission contained reference to an offer of £3million, made by David Kipling (the connection with Save the Odeon is not made clear) which concluded without the offer being accepted. Mr Kipling in representations makes reference to two offers made by his solicitors HBJ Gateley Wareing to acquire the site to convert the rear to serviced apartments for use by Staycity, an aparthotel company, but does not link his offer with Save the Odeon Limited. A letter of 9 April 2009 from the applicants referred to interest expressed by John Need on behalf of New Victoria Trust who intended to re-open the building as an arts cinema, but no further contact appears to have been made to substantiate that interest. The Schedule of Interest attached to Montagu Evans' report to the Council refers to interest by Dale Gibson, though it is not clear whether this was in association with other parties. The timeline provided by the applicants indicates that the Consortium made an initial offer of £3 million in 2006, which was later increased to £3.15 million and later to £3.4 million. However it also indicates that it was subsequently reduced to £2.75 million, which was rejected by the applicants. None of these offers has been accepted by the applicants, but on the information before me none are at present fully substantiated, though I do not doubt the sincerity with which they are put forward.

159. The next question is whether marketing was at a price which reflected the building's location and condition, and the evidence has produced a number of different valuations of the building at different times in support of differing stances. It is known that the applicants bought the Edinburgh and Glasgow Odeons at the same time for a joint price of £4 million, and that for purposes of registering title the applicants put a value of £1.5 million on the Edinburgh property.

160. The valuation carried out in 2003 by Colliers CRE appears to have informed the applicants' assessment of bids for the property in most of the intervening period, although I fully accept their argument that it was not the only influencing factor.

161. A valuation for Rock Elim Trust by D M Hall in 2004 in pursuit of their interest in the building reported that the sellers were looking for clean offers ie without suspensive conditions in terms of planning consent, surveys etc in excess of £2.5 million, but that they would value it at £2 million maximum, with around £600,000 underpinned by the (at that time) existing planning consent for the Buccleuch Street frontage.

162. The Scottish Government's Principal Estates Surveyor, on being consulted by Historic Scotland, has raised a number of questions about the applicants' valuations. The applicants have characterised the questioning of the valuation as an attack on the professionalism of their valuers, but I do not read the questions in that way. I do not doubt that the valuation was provided in accordance with the standards of RICS and represented their view of the estimated amount for which the property should exchange between a willing buyer and a willing seller. However the valuation is more than simply the headline figure. The Principal Estates Surveyor points out that the "face value" of £2.3 million is on the assumption of a marketing period of 18 months, with only £1.8 million in the event of a restricted marketing period. It is notable that the applicants rejected a bid for precisely that amount from the Rock Elim Trust, even bearing in mind the elapse of time since the 2003 valuation and the other reservations they expressed about that bid. The Scottish Government's Principal Estates Surveyor also points out that achieving this figure is dependent on expenditure of about £1.25 million to refurbish the property to retail leisure use with residential development on Buccleuch Street, expenditure which the applicants have not carried out.

163. A valuation exercise carried out by the Council's Economic Development Surveyor (undated but presumably in 2007) and appended to the applicants' Marketing and Economic Statement resulted in a Class 11 value of some £2.25 million to £2.50/£2.60 million at best and he considered this would produce a very satisfactory return in terms of capital return on cost given that the building was valued at purchase at £1.5 million. His valuation was stated to be based on the same rental rate per square foot as had been separately recommended by chartered surveyors Donaldsons and Grimleys.

164. The most recent valuation of the property at £2.98 million was carried out was carried out for the Royal Bank of Scotland in 2008. This was originally only issued on a confidential basis but was later released into the public domain and I have taken account of it. It was stated to be carried out to assist the bank in appraising the current lending facility. It was thus not prepared for the applicants and can be regarded as independent. However it seems to have been prepared on a number of assumptions which were favourable to a higher valuation, and without regard to other assumptions which might have led to lower figures. It was prepared in the knowledge of the Council's decision to grant planning permission subject to the conclusion of a legal agreement and contained an extensive review of the hotel market, in anticipation of the proposed development. It may thus have been prepared without full awareness of the presumption in favour of retaining the whole building.

165. The valuers were provided with copies of the Planning Design Statement, Consultation Report and Marketing and Economic Statement detailing the history of the site, but significantly they do not appear to have been provided with the Conservation Plan with its recommendation for the retention of the auditorium. The fact that the SWOT analysis in the valuation of the building's strengths, weaknesses, opportunities and threats does not identify the refusal of permission for the current scheme as either a weakness or a threat strengthens my view that the valuation may have been based on an over-optimistic estimate of the prospects for demolition.

166. Valuation was given on the basis of the 26,631 sq ft floorspace figures provided by the applicants, but without access to the building, and so without any assessment of the

usability of the floorspace. It was valued on the basis of vacant possession in its existing use as a cinema, and with a residential development of nine units to the rear. The valuers indicated that they had regard to sales of similar cinema/night club buildings in Edinburgh and Glasgow with a view to establishing a capital rate per square foot and set a rate of £100 per square foot to reflect the location within Edinburgh City Centre and close to Edinburgh University. However they made no reference to the refusal of an entertainments licence for these premises, which one would expect to have reduced the marketability of the premises as a night club, and hence, presumably, the applicable rate per square foot. I also note that Montagu Evans commented that the overall size of the auditorium and the cinema as a whole resulted in the overall rental rate applicable for the uses which potentially might be attracted being high, thereby reducing the level of interest. One interpretation might be that the valuation may not have had access to information of the effect of listed status on the ways in which the building might be used or adapted and thus may not have taken it into account.

167. The Drivers Jonas report prepared for Historic Scotland includes the following: “we particularly disagree with Montagu Evans’ statement that ‘DHP have taken every practicable possible step to secure the Odeon’s future’. We are of the opinion they have in fact only taken every possible step to obtain the best price”. I would not put my own conclusion in quite such stark terms. The applicants have in my view made considerable efforts to secure the building’s future and their commissioning and production of the report of Simpson and Brown, albeit belatedly, demonstrates that their intentions were not solely aimed at disposing of the building for the best price. However, having obtained an offer for the building which exceeded the valuations of the building they had been given they have refused lower offers on the grounds that they did not value the building realistically.

168. None of my comments are in any way intended to express any doubt about the honesty, integrity and transparency of the valuations or those who have provided them. However I have reached the conclusion on the basis of the events presented to me that the applicants may have maintained a view of the value of the building in its existing state which is higher than the circumstances merited. The financial expectations of any owner must be set against the need to secure the future of the building. When balanced against a scheme which would result in the destruction of one of the most important elements of the building, namely the auditorium, it appears to me that the point has not yet been reached where the marketing of the building to potential restoring (or preserving) purchasers has been completed.

169. The applicants have other criticisms of the Rock Elim Trust offer. They consider that the Trust have not demonstrated their ability to acquire and maintain the building and have not been prepared to open their accounts to them. Email exchanges between the parties provide some evidence to support this, but the Trust’s submission of August 2009 sets out their financial position. It may well be the case that the applicants have had difficulty in communication with the Trust, but on the basis of this most recent submission they appear to be in a position financially to proceed with a purchase and to have the backing of the parent church. The evidence supports that applicants’ claim to have received no formal offer for the building but it also appears to be the case that approaches by Rock Elim Trust were rebuffed by the applicants.

170. The re-marketing of the property in 2007 was stated by the Council in correspondence to be to establish whether there were alternative uses that would retain the entire building. The Rock Elim Trust proposal if successful could achieve exactly that and yet a note of a meeting of 27 November 2007 indicates the applicants' view that they could demonstrate beyond reasonable doubt that they have fully explored alternative uses.

171. The interest of Rock Elim Trust in the building and their proposals for its use are a demonstration that there are other options which would ensure a continuing beneficial use for the building with less impact on its special interest. The failure up to now of the two parties to reach agreement on price is not in my view sufficient reason to conclude that the building cannot be sold, for the reasons given above. In a letter to Historic Scotland of 14 May 2009 the applicants expressed the view that the offer of Rock Elim Trust was no longer certain and that the only funding the church could obtain was for much less than that figure and depended on others joining them. They saw little point in pursuing that line of inquiry. However there is continued interest on the part of the Trust in purchasing the property as evidenced by their most recent representations of 26 August 2009 though it would seem from the file that some of their interest was expressed to Historic Scotland rather than to the applicants. Other parties in representations have expressed interest in acquiring the property, but the seriousness of their intent is less easy to discern. New Victoria Trust are mentioned by Historic Scotland, but appear not to have made a firm offer to purchase. Save the Odeon Limited refer to a bid which was rejected by the applicant, but that offer appears to have been made on behalf of a different organisation, The Consortium. If Ministers accept my recommendation it would still be open to those organisations, or others, to firm up on their interest in the building and to negotiate with the owners. It is however possible to say that at least one and maybe more parties are interested in purchase, though at a price lower than the applicants have hitherto been willing to accept.

172. It seems to me that the essence of the fourth SHEP test is that a proposal involving demolition of a listed building should only be permitted where it has been demonstrated beyond reasonable doubt through a marketing campaign that no other party exists who would be prepared to acquire and restore (or, I would contend, preserve) the building. Inevitably this puts any applicant for listed building consent in the position of both pursuing their own interest in a scheme for demolition and of marketing the property to others. The tensions inherent in that situation have in my view affected the approach of the applicants to bids for the building and have resulted in the rejection of bids which on the face of it might have been accepted, or at least investigated further.

173. Taking the requirements of Paragraph 3.50(d) of SHEP as a whole, therefore, it seems to me that not only is the repair of the building economically viable but that the admittedly extensive marketing of the building has not fully complied with the policy's requirements.

Summary conclusions

174. There are strong arguments on both sides of this case. This building has been empty for a long period and there is a strong desire to see the site brought back to life rather than left in its present moribund state. The scheme put forward by the applicants for the replacement of the auditorium and Buccleuch Street frontage and the refurbishment of facade and the areas close to Clerk Street is of high quality and has attracted significant

support both for its architectural quality and for the concept of an arts-related development which it represents. However the special qualities of the building which go beyond local interest demand that every avenue must be explored before the demolition of a significant part of the building is permitted and the special quality of the building as a whole is lost. Scottish Ministers' policy in this respect is clear. It appears to me that in arriving at the present scheme not all the possible alternatives to demolition have yet been explored.

175. In terms of the SHEP tests, it is common ground that the building is of special interest, and that it is not incapable of economic repair. The scheme which would result from the demolition proposed would deliver economic benefits to the local community and nationally, but I have concluded that they would not be so significant as to outweigh the presumption against demolition, and that since economic and social benefits would also be gained from the repair or restoration of the building its demolition is not essential. Finally, the repair of the building has not been shown to be economically unviable, and while no potential restoring purchasers have been found who are acceptable to the applicants, I have concluded that there remains interest in the purchase of the building from parties whose intentions would be to preserve it and that that the point has not yet been reached where the marketing of the building to potential restoring (or preserving) purchasers has been completed..

176. I agree with Historic Scotland that it remains possible that the current proposals represent the best opportunity for the Odeon cinema to be brought back into use, even though that would involve the loss of the auditorium and the consequent considerable reduction in the building's special interest. However I have concluded that not all alternatives to demolition have been fully explored. Having reviewed all the written submissions I have concluded that on the balance of probabilities the point has not yet been reached when all the requirements of Ministers' policy have been met. The demolition proposed has not been justified and consent should not be granted.

Recommendation

177. I recommend that listed building consent be refused.

M J Culshaw
Reporter