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PLANNING DEPARTMENT						
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Comments <i>Copy of Inspector's Report in full and application for costs re listed bldg application on file 4/1989/88LB.</i>						

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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND 37 AND SCHEDULE 11  
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)  
APPEALS BY MIDFAIR PROPERTIES LIMITED  
APPLICATION NUMBERS 4/2298/88 AND 4/1989/88LB/GPB/JDS

- I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector Mr J M Steers DA (Manc) Architect, who held a local inquiry into your clients' appeals:
  - Under Sections 36 and 37 of the Town and Country Planning Act 1971 against the failure of Dacorum Borough Council to give notice of their decision within the prescribed period on an application for planning permission for redevelopment with 3/4-storey office buildings (Class A2 and B1 use), basement car park and courtyard garden at 91-101 High Street, Berkhamsted, Hertfordshire; and
  - under paragraph 8 of Schedule 11 to the same Act against the failure of the same Council to give notice of their decision on an application for listed building consent for the demolition of the Rex Cinema at the same address.
- The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that the appeals be dismissed. A copy of the report is enclosed.
- The Secretary of State notes that, with the agreement of the Council, your clients amended the planning application, indicating that Block A, 1,445 sq m, would be for Class A2 use; and Blocks B and C, 2,069 sq m, would be for Class B1 use, making an internal total area of floorspace of 3,514 sq m. Your clients submitted an amended car parking plan (no 4123/1) showing a total of 81 spaces, also with the agreement of the Council. The appeals are therefore being determined on the basis of the applications as amended.
- The Secretary of State has given careful consideration to all the arguments for and against the appeals proposals and to the Inspector's conclusions and recommendations. He notes that the Rex Cinema was Grade II listed in February 1988 and that the appeal buildings are immediately adjacent to the designated Berkhamsted Conservation Area, although the proposed Block A would be partly inside the Conservation Area.
- On the question of listed building consent for demolition of the cinema and associated shops and maisonettes, the Secretary of State accepts the Inspector's view that the internal features of the building and its historical interest are such that its statutory listing is justified. He also agrees with the Inspector that insufficient sustained efforts have been made to continue the original use of the building or to find a suitable alternative use for it, in whole or in part.



Your letter of 27 June 1990 giving further evidence on this point has not caused the Secretary of State to take a different view on this issue. He therefore concludes that insufficient reasons have been put forward to override the desirability of preserving the listed building.

6. With regard to the planning appeal, the Secretary of State agrees with the Inspector that, while the proposed development is not unacceptable in policy terms, the appeal proposals would be a discordant feature in the street scene, damaging to the setting of the adjacent listed building, and would neither preserve nor enhance the character or appearance of the Conservation Area. He therefore concludes that planning permission should not be granted.

7. All other matters have been taken into account but, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations and hereby dismisses your clients' appeals.

8. Separate notes are attached to this letter setting out the circumstances in which the validity of the Secretary of State's decisions may be challenged by the making of an application to the High Court.

9. The Council's application for costs against your clients is still under consideration and a separate letter notifying the Secretary of State's decision on this will be sent shortly.

I am Gentlemen  
Your obedient Servant

R A SANDERSON  
Authorised by the Secretary of State  
to sign in that behalf

CONCLUSIONS (The numbers in parenthesis refer to paragraphs in this report)

#### LISTED BUILDING CONSENT APPLICATION

189. Although the appellants claim that externally the Rex is little else than a disaster in townscape terms (pp 44), it is admitted that the building does contain some internal features of architectural merit, which, by having survived for some 50 years, have acquired a scarcity value (pp 45). However, they consider such factor does not warrant the building's statutory listing.

190. In streetscape terms the frontage building, that is the entrance to the cinema and shops/maisonettes, provides a fairly typical, if not extraordinary, example of 1930s architecture providing a strong horizontal emphasis and white painted facade, although the facade of the maisonettes as built was not originally rendered and was probably visually the better for it. The side and rear elevations, as typical with many cinemas, makes no pretence as to being of any architectural merit, performing purely the function of providing the shell of the auditorium. The projection room projecting outwards from the main building presents a particularly discordant and obtrusive feature within the street scene.

191. The modern canopy and display panel, while still maintaining a horizontal line, does not provide the same delicacy of line of the original canopy. Whether or not the original canopy exists in whole or part under the present canopy is not known (pp 11).

192. The Rex represents an example of a comparatively smallscale suburban cinema. The front facade of the cinema does not present the impressive appearance or sheer scale of many other examples of 1930s cinemas, as it is of a similar height to the adjoining shops/maisonettes, although the auditorium reaches a greater height at the rear.

193. The building falls within the general 2 to 3-storey pattern of the immediate street scene (pp 165).

194. The front facade of the building as it stands does not present any features of architectural merit that in itself warrants the listing of this building.

195. Internally there are well preserved examples of decorative Art Deco fibrous plaster work and other features within 3 distinct areas of the cinema, namely the entrance foyer, the ground floor cafe area, and the auditorium (pp 131).

196. The foyer, which is double storey in height, retains the original coffered ceiling and 2 staircases. While other features have been lost over the years, such as the chandelier, wall mirrors and island pay box, the decorative ceiling remains intact and impressive (pp 31).

197. In the ground floor cafe area the ceiling with its highly decorative cornices and with supporting fluted columns with light fittings instead of capitals, remain together with one decorative wall panel (the other being vandalised).

198. In the auditorium the proscenium arch is intact and is particularly impressive, while the side walls retain their wave and shell motifs. The wave pattern being broken during the conversion of the cinema into 2 screens at balcony level. Other features such as ceiling grills, the lay light and some original light fittings remain.

199. All the original features that remain appear to be in good condition and represent a preserved example of the building as it was at its opening in 1938.

200. The appellants claim that David Nye was a respected architect of his time, but that his cinema architecture was not outstanding and that there are better examples of his cinema work (pp 38 and 41). This may be so and although it is to be expected that many buildings which warrant listing are designed by the principal architects of the period, it does not necessarily follow that buildings designed by such architects should be the only ones considered for listing.

201. In this case I consider that the internal features contained within the building are of such a quantity and quality and in such a well preserved condition that it warrants the statutory listing of this building.

202. Consideration has therefore to be given to the criteria outlined in Circular 8/87 (pp 139) to ascertain as to whether or not there are sufficient reasons to override the desirability of preserving the listed building.

203. For reasons previously stated I consider that while the front facade of the building is not of any particular architectural merit, it does form part of the diversive nature of the street scene (pp 149) as an example of 1930s architecture within the mixture of building styles within the street which range from the 13th century to the present day (pp 146). In this context the building has historical interest not only as an example of a specific period of architecture but also as a building type which is rare in the neighbourhood. The Rex being the sole cinema building in the town.

204. The cost of repairing and refurbishing the cinema would be between £1.15M and £1.5M (pp 81 and 82), excluding VAT and fitting out; and £145,000 (excluding VAT) for the shops/maisonettes (pp 89). Although not challenged, other than by a notional suggested reduction of £100,000 (pp 90), by the Council due to lack of professional quantity surveying advice, it would appear to me that the estimated cost for repair and refurbishing the cinema are somewhat on the high side, and further savings could possibly be made.

205. It has to be accepted that it is difficult to assess a rental value where no direct comparison of rents are available and an assessment has to be primarily dependent on the earning capacity of the property (pp 88). Before its closure the cinema rental was only £7,052 pa (pp 51) and even at that comparatively low figure the former leaseholder found it difficult to maintain the business while attracting low cinema audiences, ie 21.5% capacity during the year ending 31 December 1987 (pp 88).

206. The appellants claim that a rental of £52,000 pa would only realise a capital value of £416,000 (although an upper limit of £600,000 was suggested). This would be less than the valuation of £462,000 for the shops and maisonettes and would result in a loss of £807,000 (based on the higher cost of repair works), although savings could reduce this to some £443,225. Even if the further saving suggested by the Council could be made the loss would still be £343,225 (pp 88-90).

207. The assessments made both in relation to rental and capital values, allied to the cost of repair and refurbishing, seem to indicate that the leasing of the Rex would not represent a good investment. However, I am not convinced that the rental and capital values are in fact based on sound assessments. No evidence was presented in relation to rentals of other cinemas, to show that £52,000 pa was an upper limit, especially in relation to a refurbished cinema possibly of up to 3 screens or 2 screens with ground floor in another use.

208. Evidence was presented as to the attempts made by the previous owners to try to bring the cinema back into use, via major film circuit operators (pp 55).

209. Only one company (Odeon Cinemas) showed an interest (pp 56). This interest was not pursued by the previous owners or taken up by the appellants (pp 57). The offer indicated a willingness to refurbish the building to be followed by a 5-year lease at a peppercorn rent. I can understand the reluctance of any owner to consider as acceptable the fact that no financial return would be obtained from the property for 5 years with an uncertainty of what was to follow, but if the offer had been followed through and an agreement reached, the building owners would have had a fully refurbished building on their hands at the end of 5 years at the cost to them of the equivalent loss of 5 years rent. Based on the appellants review of rental at £52,000 pa, this would amount to £210,000 to be set against the cost of refurbishment works. The estimated cost of electrical services alone being some £194,900 it would seem to me that the Odeon offer should have made, as far as the owners are concerned, sound economic sense.

210. However, 2 advertisements were placed offering the property for sale or to let (pp 60). While a number of enquiries were received these were not followed up when additional information was supplied which indicated the poor state of repair, and the fact that the building was listed (pp 61). A more true reflection of initial response would have been obtained if the advertisements had identified in which town the cinema was situated, and that the building was listed. The latter point would at least have identified a major constraint if any potential inquirer had redevelopment in mind or would have wished to carry out major works or alteration.

211. The appellants firm belief that the building was not of listable quality and that it should be de-listed has tended to push into a poor second place the need to consider every possible effort to continue the buildings present use or to find a suitable alternative use. The only evidence presented at the inquiry to show that efforts had been made to market the site, to draw up alternative proposals incorporating retention of part of the Rex, the preparation of costings for the refurbishment of the Rex, and enquiries re the possibility of grants (pp 65) in relation to the building all post-date the listed building consent application and the submission of the appeal.

212. Insufficient sustained effort has been made to consider the potential of the building being used, in whole or part, for an alternative use.

#### PLANNING APPLICATION

213. The site lies within an area allocated for commercial development on the DPP Proposals Map (pp 155), and thus in policy terms, as far as land use is concerned, the development is acceptable in principle.

214. I agree with the Council's contention that the existing maisonettes are in a poor environmental situation and as such the retention of the units, in such an adverse location, would not be desirable even though their loss would conflict with DPP Policy 56; and that the loss of the shopping units would not adversely affect the vitality of the town's shopping centre (pp 155).

215. The main issues which need to be addressed in relation to the proposed development are whether it would have an adverse impact on the street scene; on whether the design and appearance of Block A would be harmful to the character of the Conservation Area and to the setting of the adjacent listed building (103-109 High Street); and on whether satisfactory provision could be made on site for the parking of cars (pp 156).

216. The existing building abuts, but lies outside the Conservation Area, whereas the proposed building (Block A) would lie within the area; Blocks B and C would be outside the area.

217. The frontage of Block A would line up with the front corner of the adjacent listed building and would thus mask its blank end elevation. This would place the proposed building approximately on the line of previous property on the site (Egerton House) (pp 23). I can see nothing to suggest that the bringing forward of development would, by itself, materially affect the setting of the listed building, the street scene, or the character of the Conservation Area.

218. The setting back of the Rex behind a service road presents the exception rather than the rule in this section of High Street where development for the most part is set close to the back edge of the footway.

219. The service road, while providing a degree of open space in the street scene, is not particularly attractive providing only an expanse of tarmac and flagging to the passer-by. The set back, by exposing the blank end to the adjacent listed building, produces a feature in the street scene which is bland and uninteresting.

220. However, while the siting of the building itself may not have a detrimental effect on the street scene, consideration has to be given of the effect that the scale, massing, and design of the proposal would have.

221. In this context Block A, in so far as the front elevation is concerned, would not provide the passer-by with the true picture of the storey height of the building. It would present an impression of 3-storeys, whereas there would be extra storey in the roof space (pp 162).

222. When seen from the immediate street level the steepness of the low pitch of the roof would appear as an alien feature in the street scene being out of character with the sloping pitched roofs of adjacent listed buildings and other buildings in this part of the Conservation Area. The large expanse of practically flat roof, when seen from higher ground, would be out of character with the general roof scape of the area. Accordingly the proposed roof would not enhance the character or appearance of the Conservation Area.

223. It is appreciated that the foyer to the Rex and to the shops/maisonettes on the site have flat roofs. However, flat roofs were a particular feature of 1930s architecture as were asbestos cement clad pitched roofs on larger buildings behind facades, such as with this cinema, factories etc. Thus while there may be some visual conflict between the flat roofed 1930s buildings and the pitched roofed buildings of other periods, the presence of flat roofs to the Rex and shops/maisonettes in this street scene represents part of the historical built form of the area (pp 146).

224. The visual conflict between the proposed roof form and that of the adjacent listed building, and which would give the appearance of, if not in actual fact of a higher roof, would be accentuated as the proposed building would be nearer to the road. The proposed building, by its length and apparent height, would appear more dominant in the street scene than that presently provided by the Rex and shops/maisonettes.

225. The appellants contend that the proposed building has to be judged on its own merits. This may be so, but I agree with the Council that to some extent attempts have been made in the design of the front elevation of Block A to copy the adjacent listed building, by the introduction of individual doors to each office unit, the provision of steps up to those doors, and with frontage railings (pp 158). The roof, without dormers, in contrast to the remainder of the proposed development, is

an unsuccessful attempt to match the height of the 2 buildings (pp 162), and the set back in the facade and the lowering of the building height over the covered walkway attempts to break up the facade to avoid the proposed building appearing, in terms of length, to be the more dominant building in the immediate street scene.

226. This having been said there are 3 noticeable differences between Block A and the adjoining listed building, namely the introduction of horizontal line features (not specified) at window head height (pp 158); that the windows are all of the same height unlike the hierarchy of window sizes in the listed building (pp 109); and the windows are sans glazing bars unlike the multi paned windows in the listed building. Furthermore, no details of window frames are given, ie such as sash or pivoted (pp 158).

227. In my opinion the proposed development, by being a partial copy of the finely proportioned frontage of the adjacent listed building, would be seen and judged as such in the street scene. It would not in my view be seen as a building designed in its own right to be sympathetic to and harmonious with the adjacent listed building and yet not conflict with or dominate that building. The proposal, by not being one thing or another, would be a discordant feature within the street scene, damaging to the setting of the listed building, and would neither preserve nor enhance the character or appearance of the Conservation Area.

228. In respect to car parking it is accepted by the Council that the proposed provision would comply with the guidelines laid down in the extant DDP (pp 111). Although the plan is currently under review the interim car parking guidelines, which have been approved by the Council for development control purposes, have not been the subject of public consultation (pp 112). Accordingly, I consider that they should be accorded little weight in the consideration of this appeal, and that the provision of 81 spaces as shown on the substituted plan be considered acceptable.

#### Conditions

229. The Council's suggested conditions (pp 154 and 170) were added to and amended at the inquiry. The appellants main concern, in relation to the second appeal, was that the original condition (No 6) requiring that the areas of flat roofs and dormer cheeks be finished in lead was unreasonable on the grounds of cost (pp 118). I agree with such contention and consider that condition 2 relating to materials would provide the necessary control to ensure the satisfactory appearance of the proposed building.

230. Concern was also raised about Condition 4 (second appeal) that the window sashes should be painted white (pp 118). I can see no reason to suggest that such requirement would be unreasonable in view of the sensitive nature of the area, where white window frames are the norm.

231. I append at Annex A to this report suggested conditions, based on the Council's suggested conditions as modified, for consideration if you are mindful to uphold either or both of these appeals.