

Protecting theatres for everyone



28 October 2020

Planning for the Future Consultation
Ministry of Housing, Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

By e-mail: planningforthefuture@communities.gov.uk

White Paper: Planning for the Future

Theatres Trust welcomes the opportunity to provide comments on the above document, and a completed consultation response form is enclosed. For convenience our response has also been made online via the link provided. Additionally the Trust has written under separate cover on 9th October 2020 to the Secretaries of State for Housing, Communities and Local Government and for Digital, Culture, Media and Sport to set out the key elements the Trust would want to see included within reform of the planning system. These are:

1. High level policy enshrining the provision and protection of culture as a core principle within planning, including encouraging local planning authorities to identify gaps in provision at the plan-making stage.
2. Protecting theatres and other existing cultural facilities, including carrying forward the 'Agent of Change' principle.
3. Ensuring the provision of new theatres or cultural facilities where needed, including the possibility of a 'standard charge' mechanism for funding the provision or enhancement of cultural infrastructure and ensuring combined Infrastructure Levy maintains or increases current receipts from CIL and Section 106 agreements.

Although termed a 'White Paper', other than setting out the overall parameters of how Government seeks to take forward reform of the planning system the consultation paper does not lay out specific proposals for legislation or give detail on any particular sector or topic area. Therefore, while we have positively set out comments on the proposals as they have been introduced and outlined what we see as potential opportunities and challenges reflecting the key elements cited above, we are keen to see further detail and from our perspective how the future planning system will embed cultural provision as a central pillar of sustainable development and major contributor to the economy, to the vitality of our town centres and to the well-being of our people.

The Trust considers the planning system should facilitate development and change in a way that promotes and engenders culture. Whilst we recognise the importance of the delivery of housing, which is the primary land use focus of this paper, this should not come at the expense of the nation's diverse cultural facilities including its theatres. Reform of the planning system provides an opportunity to reinforce the role of culture within sustainable development and ensure the

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planning system maximises the benefits of cultural activity to social well-being, local economies, and sustainable communities. This is increasingly important as town centres come under increasing strain; cultural facilities are recognised as key drivers of footfall and support other businesses. They also help improve the desirability of areas as places to live, in turn encouraging new housing and jobs.

The Trust has significant experience of matters related to theatres and other arts and cultural uses and would welcome the opportunity to provide our assistance should it be required, for example with the drafting of future national policy if taken forward. We would also welcome further discussion on this representation.

Yours sincerely,

Tom Clarke MRTPI
National Planning Adviser

About the Theatres Trust:

Theatres Trust is the National Advisory Body for Theatres. We were established by The Theatres Trust Act 1976 'to promote the better protection of theatres'. Our trustees are appointed by the Secretary of State for Culture, Media and Sport.

Theatres Trust is a statutory consultee in the planning system. We provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre'. The Act defines a theatre as any building or part of a building constructed or used for the public performance of plays, and therefore applies to theatres, playhouses, arts centres, ciné-varieties or buildings converted for theatre use, old and new, in other uses or disused.

The Trust also engages with local authorities in the preparation of Local Plans and other policy documents, and encourages the inclusion of local policies that support cultural facilities and cultural wellbeing. We identify 'Theatres at Risk' and provide advice and assistance to empower owners and community groups to purchase, restore and/ or reuse theatre buildings to create opportunities for local cultural participation, to find sustainable new uses, and to use culture as a catalyst for wider regeneration in their communities.

We are often the only source of expert advice on theatre use, design, conservation, and planning matters available to theatre operators, local authorities and official bodies. Whilst our main objective is to safeguard and promote theatre use, or the potential for such use, we also seek to provide impartial expert advice to establish the most viable and effective solutions for proposed, existing and former theatre buildings at the earliest possible stages of development.

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Response form

Our comments are set out below:

1. What three words do you associate most with the planning system in England?

2. Do you get involved with planning decisions in your local area?

[Yes / No]

The Trust is a statutory consultee within the planning system and is engaged by local planning authorities on planning applications, including listed building consents, across the country. We also proactively engage in planning policy consultations at national, regional and local levels, seeking to ensure that plans and policy frameworks provide for the cultural needs of their areas. As the national advisory public body for theatres we are a source of specialist advice.

2(a). If no, why not?

~~[Don't know how to / It takes too long / It's too complicated / I don't care / Other – please specify]~~

Not applicable

3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?

~~[Social media / Online news / Newspaper / By post / Other – please specify]~~

As a statutory consultee we should be notified of relevant applications, and our preference is for this to be done electronically via e-mail. There are however a number of instances where this has not been the case, but the Trust is proactive in minimising non-consultation by utilising the key word and address function of the Public Access system for the local authorities which use it (around 60%) to enable automatic notification. Many of these also have a mapping facility. The systems used by the remaining local authorities are incapable of such a function; on some it can be difficult to locate any information at all. On that basis there would appear to be scope for some degree of standardisation and modernisation so that application information is more readily available and searchable. We would suggest that any reform and improvement of data accessibility and transparency might also consider a review of notification procedures for statutory consultees in order to reduce instances of non-consultation and in turn help improve the robustness of decision-making and enhance the outcomes of development.

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4. What are your top three priorities for planning in your local area?

~~[Building homes for young people / building homes for the homeless / Protection of green spaces / The environment, biodiversity and action on climate change / Increasing the affordability of housing / The design of new homes and places / Supporting the high street / Supporting the local economy / More or better local infrastructure / Protection of existing heritage buildings or areas / Other – please specify]~~

Again, we would note the Trust works nationally. To greater or lesser extents our remit and interests cut across many of the priority subjects identified. Fundamentally our main priority is to ensure the English planning system recognises and responds to the immense value of culture and the performing arts to the national economy, the viability and success of our town centres, the sustainability of our communities, to people's health and well-being, and to the nation's heritage. In the case of theatres specifically, these can often be the most historically significant and distinctive building within their local area whether in active theatre use or utilised for other purposes. Cultural facilities including theatres are vital for sustaining and encouraging footfall within town centres, and support other businesses. They provide a number of jobs and opportunities. On that basis we consider it essential that changes to the planning system including the policy framework supports and protects these valued assets. Moreover given the benefits we have articulated we strongly advocate that assessment of need, planning and funding for infrastructure incorporates each area's need for cultural infrastructure whether that is additional facilities to meet the needs of growing populations or expansion and enhancement of existing facilities.

5. Do you agree that Local Plans should be simplified in line with our proposals?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

In principle the Trust is supportive of the simplification of Local Plans, and is in broad agreement with the Government's general view articulated within the consultation document that the current process of preparation is too long and onerous. However, the process of identifying and designating land under the three categories of 'Growth', 'Renewal' and 'Protect' will itself be onerous and contentious particularly for authorities encompassing areas of tight urban grain where even within very small areas there may be great diversity and contrast in building types and character. Moreover, we have significant concerns as to how these categories could work on a practical level and that it could result in valued or architecturally significant buildings and facilities being undermined or not sufficiently protected. New development might also not be the most environmentally sustainable option compared to retention or re-use. Thus without sufficient safeguards there is a risk that simplified zones may not be conducive to delivering sustainable development. Simplification of plans might also compromise the ability to uphold unique designations and policy areas, such as protecting the function and character of globally significant cultural and performance clusters such as London's West End. These considerations are articulated more fully in our responses to subsequent questions.

We are very supportive of greater digitalisation of Local Plans and their supporting maps and

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designations. It is currently very common for proposals maps in particular, whether adopted or subject to consultation, to be indecipherable and this undermines effective engagement and democracy. We would however suggest that to achieve this aim there will need to be significant resource invested into digitalisation and the upskilling of Planners.

6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

[Yes / No / Not sure. Please provide supporting statement.]

From the Trust's perspective there are advantages and disadvantages associated with such a proposal.

In the case of policies relating to cultural facilities there is great disparity across the country between plans; some have very strong policies with a clear presumption against the loss of facilities backed by robust criteria which must be addressed by applicants. In other cases cultural policy may be weak or non-existent. Providing national policy would promote and protect England's valued cultural facilities including theatres this would bring about welcome standardisation. However it must be recognised and acknowledged that national policy would compromise ability to respond to local circumstances and priorities. This may dilute special protections afforded to facilities in areas where existing policy is especially strong and/or where there are notable clusters of cultural uses such as the West End of London and some other larger cities. The alternative option of allowing a locally defined approach in some circumstances might be an effective compromise position.

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of "sustainable development", which would include consideration of environmental impact?

[Yes / No / Not sure. Please provide supporting statement.]

In principle the Trust would be supportive of such a simplified test if sufficiently robust so as to meet planning objectives outlined in the NPPF/future framework. In assessing the infrastructure needs of local areas we would suggest cultural infrastructure needs should be included alongside other important requirements such as education, social infrastructure, transport and utilities. Inclusion of culture would reflect the United Cities and Local Government's 2010 update of the definition of sustainable development which includes culture as the 'Fourth Pillar of Sustainable Development'.

7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

We would suggest that an alternative mechanism for dealing with cross-boundary issues should be maintained, for example from our perspective demand and use of cultural facilities might

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transcend boundaries for example where urban extensions go beyond the boundary of urban authorities or where the closest centre to a settlement is beyond its administrative boundary.

8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?

[Yes / No / Not sure. Please provide supporting statement.]

The Trust does not wish to make comment on the standard method itself however we consider it vital that in determining housing requirements for each area the final number must take into account constraints including impact on cultural facilities and need for new facilities which would themselves require suitable land. In some cases very large housing numbers restricts land available for other uses necessary to support communities and deliver sustainable development.

8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?

[Yes / No / Not sure. Please provide supporting statement.]

See response to 8a.

9(a). Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?

[Yes / No / Not sure. Please provide supporting statement.]

At present there is insufficient detail to fully ascertain the merits or disadvantages of such an approach, including whether it would incorporate large-scale mixed-use developments such as London's Opportunity Areas or whether this designation would override other measures within the planning system such as exemption from demolition under the GPDO. In principle we could support this approach in certain circumstances particularly in the case of urban extensions and new settlements, but this would be contingent on sites being free of any constraints or limiting factors. From our perspective this would mean the presence of a theatre on the site, but more broadly this could also include heritage assets whether designated or un-designated and other valued community, cultural or social uses. As such and on that basis we have some nervousness as to how Growth areas may function in areas of significant brownfield regeneration where existing buildings and uses may be present. We would suggest there should be a mechanism in place to ensure that these developments and new communities contain a necessary and beneficial mix of uses. We are also concerned that reform of planning obligations cited later in our response may make it harder to secure effective on-site (or nearby where beneficial) re-provision of existing facilities and/or contributions towards their improvements where automatic outline permission would necessitate their loss or displacement.

We suggest that Growth areas might be applied only to sites clear of existing buildings, identified assets and other such constraints, or for there to be explicit provisions which provide for

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protections or exclusion from development on those sites. Otherwise there is a risk that the delivery of Growth sites may undermine other priorities and sustainable development.

More generally the success of proposals for Growth as well as Renewal areas in terms of whether they are successful in bringing forward greater levels of development to meet identified needs will depend on finer details of the Government's proposals and clarification as to how such zones will be intended to operate.

9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?

[Yes / No / Not sure. Please provide supporting statement.]

Similar to our response to 9(a), whilst in some circumstances there may be merit in a presumption in favour of certain development within Renewal areas we have concerns as to how extensive such areas may be and that development within them may undermine or give rise to the unnecessary loss of valued and viable theatres and other facilities. We consider that theatres outside of designated town centres which are not heritage assets or within Conservation Areas would be most vulnerable as stand-alone uses. Yet these are often the very types of facility which most facilitate participation in the arts and enhance the social and cultural well-being of local people, for example small theatres run by amateur and community groups. Even the potential for such facilities to be converted to higher financial value uses under automatic consent could see theatres threatened because freeholders could seek their displacement in order to bring development forward. To a lesser extent there may also be vacant theatre buildings which are non-designated heritage assets threatened where there is realistic prospect of a viable return for theatre or other community/cultural use. On a practical level we would suggest that the designation of areas for Renewal and the identification of exemptions and constraints within them could be unreasonably onerous for local planning authorities.

Additionally, even within designated town centres there is some risk to theatres and other noise-generating venues should incompatible neighbouring development come forward without sufficient mitigation. On that basis the existing provisions of paragraph 182 of the NPPF ('Agent of Change' principle) and of a number of types of Prior Approval should be carried forward. In fact, although town centres have been referenced in the context of 'Renewal' in many areas these will also contain a high degree of historic character and a number of undesignated and designated heritage assets.

We are however supportive of maintaining existing arrangements for areas and individual sites designated as 'Protect'. Along with the examples cited on page 24 of the consultation document (word version) we would strongly advocate the addition of community and cultural facilities to the 'Protect' designation; this could be a blanket inclusion or individual sites and buildings could be identified by way of Asset of Community Value designation. However in the context of built heritage what is not clear is whether on an individual basis 'Protect' would apply purely to an individual asset or whether it would also apply to its setting.

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9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

[Yes / No / Not sure. Please provide supporting statement.]

Not applicable to the Trust's remit

10. Do you agree with our proposals to make decision-making faster and more certain?

[Yes / No / Not sure. Please provide supporting statement.]

In principle we are supportive of faster and more certain decision making timescales. However, as described within Question 3 there are occasions where as a statutory consultee we have not been appropriately notified or have not been notified in a timely fashion. We would therefore encourage a degree of flexibility to be retained to account for scenarios where either the planning authority has not properly undertaken their duties by notifying statutory consultees, and where following or during consultation new information or amendments are submitted which materially alter the application but could result in a more positive outcome and better development. In terms of digitalisation we have already expressed our support for such a proposal, again noting this will have staffing and resource implications in its delivery.

Although we understand the rationale behind potentially refunding applicants if an application is refused but then allowed on Appeal in practice we are concerned this could result in unintended negative consequences for proper decision-making. It could place undue pressure on Committees to approve applications for which there may be valid and legitimate reason for refusal, but for which an Inspector comes to a different professional opinion.

11. Do you agree with our proposals for accessible, web-based Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

Again as articulated previously we are supportive of greater digitalisation and the greater consistency and usability this would bring, resource considerations notwithstanding.

12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

We consider a shorter statutory timescale would help ensure the robustness of plans and that they are reflective of up-to-date needs and evidence, as long as they allow for genuine engagement in the plan at formulation stage and robust examination of deliverability. There would also need to be sufficient resource for their effective delivery.

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13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

We consider that Neighbourhood Plans should be retained. In particular this would afford an additional opportunity for valued facilities which might include theatres to be identified and protected.

13(b). How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?

Not applicable to the Trust's remit

14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Any further measures should not make it more difficult for new theatres and other such facilities to be developed taking into account necessary funding and complexities/ timescales involved in taking forward new facilities which may extend beyond time limits.

15. What do you think about the design of new development that has happened recently in your area?

~~[Not sure or indifferent / Beautiful and/or well-designed / Ugly and/or poorly-designed / There hasn't been any / Other – please specify]~~

As a statutory consultee and national advisory public body it is inappropriate for us to comment on this matter, other than to say that we are of course supportive of good and sustainable design which responds positively to its setting. We would however highlight that some of the most successful significant urban developments and regeneration schemes have embraced cultural offers and delivered new facilities which have helped increase desirability as places to live and work and increased financial returns for developers.

16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?

~~[Less reliance on cars / More green and open spaces / Energy efficiency of new buildings / More trees / Other – please specify]~~

The Trust operates nationally. However, supporting theatre owners and operators to improve the energy efficiency of their buildings is of course a priority. In addition, we consider that policies should prioritise the re-use and retrofitting of existing buildings as a first priority above demolition and new development.

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17. Do you agree with our proposals for improving the production and use of design guides and codes?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

In principle we are supportive of these proposals as long as flexibility remains for bespoke/flexible responses particularly for cultural buildings; whilst greater reference to and reliance on design codes could raise standards more generally there is a risk they could be used to stifle innovative or ambitious design which might particularly apply to arts projects for example the Factory scheme in Manchester.

18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

In principle we are supportive of these proposals.

19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Not applicable to the Trust's remit.

20. Do you agree with our proposals for implementing a fast-track for beauty?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Whilst we understand and appreciate the premise behind this proposal, we are keen to ensure that 'beauty' is not an overriding factor in outline permission and that any fast-tracking does not compromise protection of other factors such as the loss of theatres or other existing assets. However we are supportive of the Masterplanning process which we would hope to be a means of properly identifying and considering potential constraints with appropriate consultation (in particular with statutory consultees) and how these would be managed within developments coming forward.

21. When new development happens in your area, what is your priority for what comes with it?

~~[More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space / Don't know / Other – please specify]~~

Although this question is quite specific, from the Trust's perspective as a national body and statutory consultee we are keen to ensure that the cultural needs of local communities are met and that new development does not compromise existing theatres and cultural venues. As

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referenced elsewhere within our response, we consider it important that cultural infrastructure needs are prioritised alongside other types of infrastructure and that the planning system helps deliver opportunities for new cultural venues and theatres and enhancements to existing facilities.

22(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

[Yes / No / Not sure. Please provide supporting statement.]

Whilst we see some merit in a consolidated rate of Infrastructure Levy which would give some transparency and consistency subject to further detail on how it would be calculated and distributed, we would object to the loss of Section 106 without a suitable replacement procedure to manage site-specific impacts. In the case of theatres this would include (and has in the past included) securing on-site or off-site re-provision of facilities where development would displace existing theatres, the improvement of theatres, the ongoing operation of theatres through securing for example peppercorn rent in perpetuity, and necessary acoustic works to address 'Agent of Change' considerations. Failure to continue such provisions would compromise valued and viable theatres to the detriment of the local community and sustainable development.

22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?

[Nationally at a single rate / Nationally at an area-specific rate / Locally]

The Trust has no particular view on this other than, as set out above, that there should continue to be a method of securing obligations for site-specific and local considerations.

22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?

[Same amount overall / More value / Less value / Not sure. Please provide supporting statement.]

The Trust would of course welcome greater investment in infrastructure and local communities particularly in relation to cultural provision but ultimately this is dependent on viability. We would suggest a ring-fenced fund for culture or a 'standard charge' mechanism with justification being that if moving to system of less discretion at the application stage – where safeguards, delivery or improvement of culture is negotiated – there needs to be an effective and equal or greater replacement. This can be justified through the social and economic benefits of cultural facilities we have cited in previous answers as well as the role such facilities have on driving investment into areas.

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22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

In principle we are supportive of this, and in some cases this could be utilised to support the restoration and return to use of theatre buildings and other such projects which would support local communities and town centres. However, we appreciate there is an element of risk for local authorities should development not come forward as envisaged which could compromise their wider responsibilities.

23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

The Trust would welcome this proposal, particularly schemes coming forward under permitted development can be located alongside theatres and noise-generating venues thus can equally necessitate acoustic improvements and other works to make them compatible with existing neighbours.

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Not applicable to the Trust's remit.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Not applicable to the Trust's remit.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Not applicable to the Trust's remit.

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

~~[Yes / No / Not sure. Please provide supporting statement.]~~

Not applicable to the Trust's remit

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25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

[Yes / No / Not sure. Please provide supporting statement.]

In principle the Trust is supportive of greater flexibility for how local authorities spend Infrastructure Levy, on the basis a sufficient proportion is ring-fenced to provide support for cultural venues including theatres justified by the benefits of such facilities discussed previously.

25(a). If yes, should an affordable housing 'ring-fence' be developed?

[Yes / No / Not sure. Please provide supporting statement.]

Not applicable to the Trust's remit.

26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

No comment.

Theatres Trust

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The National Advisory Public Body for Theatres

The Theatres Trust Charitable Fund co-operates with the Theatres Trust, has the same Trustees and is registered as a charity under number 274697