

03 August 2023

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**London Borough of Camden  
2nd Floor, 5 Pancras Square  
c/o Town Hall, Judd Street  
London  
WC1H 9JE**

Dear Planning & Legal Department,

**BIRKBECK CENTRAL, UNIVERSITY OF LONDON, MALET STREET, LONDON, WC1E 7HY  
APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT  
UNDER SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED).**

On behalf of the Applicant, Birkbeck College and the University of London (UoL) (together the 'Applicant'), we hereby enclose an application to London Borough of Camden for a Certificate of Lawfulness of Existing Use or Development (CLEUD) at the property known as Birkbeck Central, Malet Street, WC1E 7HY (the 'Property' or 'Site').

This application is submitted to certify that the lawful use of the Property resides within the F1 Use Class (The Town and Country Planning (Use Classes) Order 1987 (as amended), "*Learning and non-residential institutions*", specifically F.1 (a) "*for the provision of education*"). In providing our assessment we have undertaken a site visit and reviewed publicly available documentation and other evidence relating to the use of the Property.

The following evidence is provided in support of this application:-

- **Appendix A:** Representation (with appendices) submitted by DP9 to the Council dated 30 November 2022 in response to correspondence received from the Council regarding an enforcement complaint made by Students' Union UCL;
- **Appendix B:** Planning Contravention Notice (PCN), issued by the Council on the Applicant dated 21 February 2023;
- **Appendix C:** PCN Response and appendices dated 13 March 2013 submitted by Pinsent Masons to the Council on behalf of the Applicant;
- **Appendix D:** Note in Support of CLEUD Application prepared by Pinsent Masons LLP and dated 03 August 2023 (Supporting Note).

**Background to the matter**

As acting Agent for the Applicant, DP9 was contacted via email on 12 October 2022 by Gary Bakall, Deputy Team Leader for the Regeneration and Planning team at Camden. The correspondence received stated the Council's understanding that work had been undertaken



at the above building that may constitute a material change of use and that such work may require planning permission. The works in question that had been carried out by the Applicant involved light-touch refurbishments to teaching and learning spaces that mainly consisted of decorative interventions for the purpose of modernising and improving the teaching and learning experience for Birkbeck's students.

The Applicant team met with Camden on 04 November 2022 on Site to discuss the works that had been undertaken. It was explained that no breach of planning control had taken place due to these works being internal minor refurbishment/re-decoration works not requiring planning permission and that no change of use had occurred as the provision of the educational offering is in accordance with the land use of the Site as F1. Further, the Council explained that it had received a representation that the Site's land use should be considered *sui generis* (i.e., a mix of the various elements that make up the Site).

DP9 prepared Representation discussing views towards the matter in a note issued 20 November 2022. A copy of this Representation forms part of this Covering Letter at Appendix A, and it concluded the view of the lawful use of the Property as F1, with all other uses carried out at the Property being ancillary to that primary use.

Further discussion between DP9 and the LB Camden Enforcement Team took place over December 2022 to January 2023, this discussion included LB Camden seeking further information as to how the property had been historically used, as well as queries as to looking to establish a potential meeting between the two agents acting for the Applicant and the Students' Union UCL.

On 21 February 2023 a formal PCN was served on University of London as freeholder of the Site and Birkbeck University as leaseholder. This PCN was issued on the basis that there has been a perceived *"unauthorised material change of use from a 'sui generis' mixed use comprising student union, student support services, bar, auditorium, cafeteria and sports facilities to teaching space within the F1 non-residential use class without planning permission."*

A formal response to the PCN was prepared and issued by Instructing Solicitors to the Council on 13 March 2023.

A letter was received from LB Camden on 31 May 2023, issued to DP9, to confirm the Council's understanding that *"the primary use of SC is F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would not be a material change of use requiring planning permission."* This followed a similar letter issued to the Students' Union UCL's planning agent, DWD, which was issued on 17 May 2023.

A claim for judicial review (JR) was submitted by Students' Union UCL's appointed lawyers, Bates Wells & Braithwaite London LLP, against the letter received by DWD from LB Camden on 17 May 2023. This JR was issued to Birkbeck College on June 29 2023. A response to this JR, prepared by Pinsent Masons acting as lawyers for the Applicant, was filed to the court on 21 July 2023.



## **Summary of Evidence and Conclusion**

The evidence accompanying this application includes:

1. An assessment of the planning history of the Property (see DP9 Representation and discussion at paragraphs 2.1 to 2.6 of the Supporting Note);
2. A comparative review of the planning treatment of student union buildings of other UoL member institutions (see DP9 Representation);
3. Discussion of relevant title matters, including a restrictive covenant affecting the Property (see DP9 Representation and paragraphs 2.7 and 2.8 of the supporting Note);
4. Correspondence from leading planning and real estate consultants and solicitors confirming their assessment of the existing use of the Property (see DP9 Representation and paragraph 2.9 of the Supporting Note); and
5. Detailed discussion of the actual use of the building supported by documentary evidence (see PCN Response and paragraph 3.2 to 3.6 of the Supporting Note).

Taken together the above evidence clearly demonstrates that the existing use of the Property is for F1 educational use including ancillary uses. This is reflected by the conclusions drawn by the Council in its letter dated 31 May 2023 to DP9 in which it confirmed its position that the primary use of the Property *“is for F1 educational use with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would not be a material change of use requiring planning permission”*. It is noted that the Council communicated its conclusions to Student’s Union UCL by way of a separate letter dated 17 May 2023 which is currently the subject of an application for judicial review. Copies of the letters are appended to this application by way of context as Appendices E and F.

The Summary Note sets out the relevant legal test that must be applied when considering an application for a certificate of lawfulness and confirms that the procedural requirements have been satisfied.

We therefore trust you have sufficient information to issue a Certificate of Lawful Use or Development, but should you have any queries then please do not hesitate to contact Marcus Stuart or Barnaby Collins of this office.

Yours faithfully,

DP9 Ltd.

DP9 Ltd.



## **Appendices**

**Appendix A - Representation (with appendices) submitted by DP9 to the Council dated 30 November 2022**

30 November 2022

Planning and Enforcement,  
London Borough of Camden,  
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Judd Street,  
London,  
WC1H 9JE.

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**SUBMITTED ONLINE**

Dear Planning and Enforcement,

**REPRESENTATION COVERING LETTER TO CONSIDER THE LAWFUL LAND USE OF THE SITE  
STUDENT CENTRAL, MALET STREET, LONDON WC1E 7HY**

We write on behalf of the Applicant, Birkbeck, University of London (the 'Applicant'), to submit a formal representation to Camden's Planning and Enforcement Team to consider the lawful land use of the site at Student Central, Malet Street (the 'Site'). As is set out below, our conclusions are based upon our own research into the planning history of the Site, other notable examples of university/student union buildings as well as information gained from accompanying documentation that has been prepared to support this representation.

**Background**

DP9 was originally approached by the Applicant to advise on town planning matters when contemplating options to purchase a 99-year lease on the Site from its freehold owner, the University of London. The Applicant had the intention to expand its education offering in this location and wanted an understanding of the risk with regard to planning. DP9 advised on the likely perceived land use of the Site, which was historically home to the University of London's Student Union.

Historical records at the time of the Site's construction and formal opening in 1957 are limited. It is understood from the Dr Negley Harte 1986 book "The University of London, 1836-1986: An Illustrated History" that whilst the University of London Student's Union was established in 1921, it was housed in various temporary locations until it found a permanent home within the Site after its opening in 1957. Whilst the original land use intention cannot be established through the public register, the restrictive covenants that exist over the wider estate that will be discussed further looks to establish a principal purpose of the Site for the intention of the University of London, and its Member Institutions. For further history on the University of London and its Member Institutions, for which Birkbeck is a member, we would advise the reader to consult the University of London's accompanying statement.

An on-line investigation of the public register that provides planning records did reveal references made on a planning application form (ref. 2010/0895/A) that is consistent with the Use Class Order 1987 that categorises land use for town planning purposes where Class D1 includes uses such as schools and non-residential education institutions.

Whilst uses such as a café (Class E if a separate planning unit) and a swimming pool (Class F2 if a separate planning unit) were therefore understood to have operated on the site, DP9 consider these to be ancillary to the primary use as an educational institution and not comprising separate planning units. The swimming pool, for example, whilst enjoyed by customers outside of the 'ULU family', was nonetheless ultimately operated by ULU as part of the services and facilities provided by ULU as an educational institution. The limited use by members of the public is incidental, was not the original intent and has not assumed a new intent over time.

Our advice to the Applicant is that it is possible for a single building unit to hold more than one land use, but operate as a single planning unit and that the current and historic operation of the building is entirely consistent with Class D1 – now Class F1. Notwithstanding, we considered that the lawful use of a student union building would likely be Class F1.

### **Correspondence received from LB Camden's Enforcement Team**

As acting Agent for the Applicant, DP9 was contacted via email on 12 October 2022 by Gary Bakall, Deputy Team Leader for the Regeneration and Planning team at Camden. The correspondence received stated the Council's understanding that work had been undertaken at the above building that may constitute a material change of use and that such work may require planning permission. The works in question that had been carried out by the Applicant involved light-touch refurbishments to teaching and learning spaces that mainly consisted of decorative interventions for the purpose of modernising and improving the teaching and learning experience for Birkbeck's students.

The Applicant team met with Camden on 04 November 2022 on Site to discuss the works that had been undertaken. It was explained that no breach of planning control had taken place due to these works being internal minor refurbishment/re-decoration works not requiring planning permission and that no change of use had occurred as the provision of the educational offering is in accordance with the land use of the Site as F1. Further, the Council explained that it had received a representation that the Site's land use should be considered *sui generis* (i.e., a mix of the various elements that make up the Site).

The Applicant highlighted that the primary use is for the purposes of teaching and learning, highlighting that all the component uses within the Site operated on behalf of, and for the purpose of further education and indeed effectively could not operate independent of this.

It was agreed at the meeting that the Applicant team would prepare a formal representation to send to the Council in order to assist their assessment.

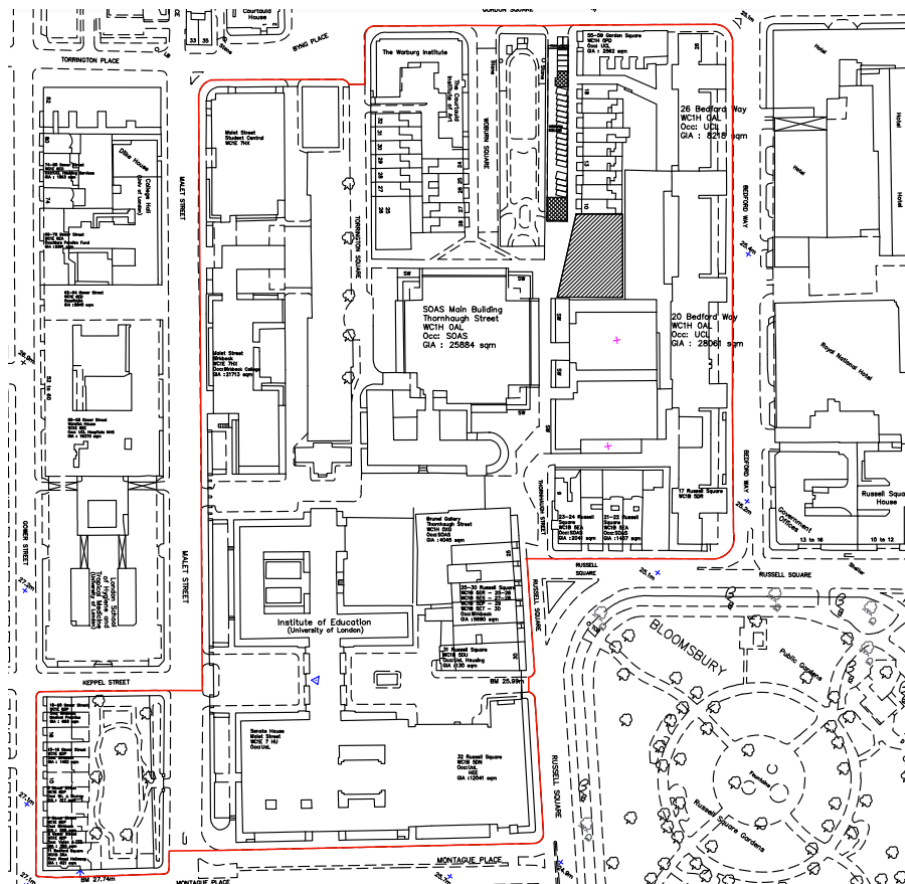
### **Assessment**

As part of our submitted representation, the Applicant team has reached out to a number of bodies and external consultants that advised on their purchase of the lease in 2021. Letters received from these parties accompany this representation and their details are listed later within this Covering Letter.

This section primarily discusses the evidence that DP9 assessed in determining the view that the Site exists within an F1 Use Class. This evidence includes the restrictive covenant that exists over the broader university campus, the planning history of the Site as well as information gathered from the planning history of other examples of buildings occupied by University of London Member Institutions.

## The Covenant

The No 1 Estate (in which the Site is located) is subject to restrictive covenants in favour of the Bedford Estate which are contained in a Transfer dated 24 June 1927 made between (1) The Duke of Bedford and (2) University of London. The No 1 Estate is held by UoL under a freehold title which is registered at the Land Registry under title number 325806. The No 1 Estate (also known as the Precinct) is shown edged in red on the below plan.



This covenant restricts both the erection of new buildings on the land and their use thereafter. As regards use, no buildings may be erected on the land "except University and College Buildings in connection with the University of London...and no building shall at any time be used except for the purpose of such University and College buildings".

On account of the existence of this covenant over the wider land, it can be argued that there is a legal framework that supports land uses only being permitted which are directly connected with the University of London and are only utilised for the purpose of the University. Ergo, ancillary functions that exist within the Estate's red line boundary must be connected to the University and its Member Institutions (including Birkbeck) and cannot be operated independently of this University purpose.

## Planning History

Our own research undertaken into the planning records of the Site held within the public register revealed previous references to the Site's land use as Use Class D1 (now Use Class F1). This can be seen most recently in a planning permission that was granted permission in 2010, the details of which can be seen in Table 1 below.

Planning Reference and Description	Address	Decision	Relevant Notes
2010/0895/A  Temporary display of non-illuminated vinyl banner over the front elevation entrance to use Class D1 building.	University Of London Union Malet Street London WC1E 7HY	Granted – 01/04/2010	D1 noted within the accepted description of development.  Existing and Proposed Land Use accepted as D1 within the 'Application Details'

*Table 1. Planning History of the Site.*

As can be seen within the 'relevant notes' section of the above table, D1 has been an accepted land use for this Site within the description of development and the application forms. At no time in recent history has this previously been raised as an issue.

### **Relevant Member Institution Planning History**

On the basis that the original correspondence obtained from Camden signalled that converting the student union into a teaching facility may constitute a material change of use requiring planning permission, DP9 has undertaken some research into the planning history of the student union buildings of other Member Institutions of the University of London. Exclusive of Birkbeck, which has its relevant planning history shown in the section above, this includes the following former colleges.

- 1) City, University of London.
- 2) Courtauld Institute of Art.
- 3) Goldsmiths, University of London.
- 4) King's College London.
- 5) London School of Hygiene & Tropical Medicine.
- 6) Queen Mary University of London.
- 7) Royal Academy of Music.
- 8) Royal Holloway, University of London.
- 9) School of Advanced Study.
- 10) SOAS University of London.
- 11) St George's, University of London.
- 12) The Institute of Cancer Research, London.
- 13) The London School of Economics and Political Science.
- 14) The Royal Central School of Speech and Drama.
- 15) The Royal Veterinary College.
- 16) UCL.
- 17) University of London Institute in Paris.
- 18) University of London Institute of Education

The addresses of each of these Member Institutions student unions can be seen in Table 2 below.

Member Institution	Student Union Address
City, University of London.	10 Northampton Square, London EC1V 0HB
Courtauld Institute of Art.	Courtauld Institute of Art, Vernon Square, Penton Rise, London WC1X 9EW
Goldsmiths, University of London	Dixon Rd, London SE14 6NW



King's College London	a) Bush House, South East Wing, 300 Strand London, WC2R 1AE  b) Boland House, Guy's Campus, London SE1 9RT
London School of Hygiene & Tropical Medicine.	No physical student union identified
Queen Mary University of London.	329 Mile End Rd, Bethnal Green, London E1 4NT
Royal Academy of Music.	Royal Academy of Music, Marylebone Road London NW1 5HT
Royal Holloway, University of London.	Royal Holloway, University of London, Egham TW20 0EX
School of Advanced Study.	Senate House University of London, Malet Street, London WC1E 7HU
SOAS University of London.	School Of Oriental & African Studies, 10 Thornhaugh St, London WC1H 0XG
St George's, University of London.	St. George's Breast Education Centre, The Rose Centre, Blackshaw Road, London SW17 0QT
The Institute of Cancer Research, London.	No physical student union identified.
The London School of Economics and Political Science.	Saw Swee Hock Student Centre, 1 Sheffield St, London WC2A 2AP / St Philips Building Sheffield Street London WC2A 2AE
The Royal Central School of Speech and Drama.	No physical student union identified
The Royal Veterinary College.	Hawkshead House, Hawkshead Lane, Hatfield AL9 7TA
University College London	Students' Union UCL, 25 Gordon Street, London, WC1H 0AY
University of London Institute in Paris.	N/A
University of London Institute of Education	20 Bedford Way, London WC1H 0AL

*Table 2. Addresses of each of the Member Institutions' student unions.*

DP9 has set out, in Table 3 below, the relevant planning history for each of these member institutions. The relevant notes section of Table 3 highlights the land use that Member Institutions' student unions have been accepted previously, as well as where information held within the planning register highlights evidence towards other uses within each of the sites (offices, leisure facilities) being ancillary to the primary educational use of the site. In a few instances there is no relevant planning history / no physical student union identified – in each of these examples this is noted.

<b>Planning Reference and Description</b>	<b>Decision</b>	<b>Relevant Notes</b>
1) City, University of London.  P2019/1124/FUL	Granted – 23/10/2019	Student union on this site confirmed through PP ref. 940696 – “Erection of a single storey extension

<p>“Alterations and extension at 6th and 7th floor levels of the University Building to provide an extension to the library as well as replacement of the glazing units on the 1st - 6th floor facades and associated works.”</p>		<p>for use as a students union office and social facilities”.</p> <p>The submitted Planning Statement for ref. P2019/1124/FUL states “that <b>“the building is in educational (Use Class D1) use”</b> and argues that that the proposal is not liable for CIL because the additional floorspace created by the proposals would be for non-residential institution (Class D1) use.</p>
<p>2) Courtauld Institute of Art. P082006</p> <p>“External alterations including the replacement and installation of 2 doors. Use of common room and smaller rooms within the SOAS Edwardian building as ancillary to both its existing use D1 and C2 the student accommodation being developed adjacent under full planning permission P070059.”</p>	<p>Granted – 20/12/2008</p>	<p>Description of Development notes that’s the common rooms and smaller rooms are ancillary to its existing D1/C2 use.</p> <p>The Case Officers Delegated Report notes <b>“the existing common rooms and offices are ancillary to the present educational use of the host building D1.</b> The common room and office and laundry room will be ancillary to both the D1 and C2 uses of the site”.</p>
<p>3) Goldsmiths, University of London DC/08/070401/X</p> <p>“The construction of a two to four storey educational building, plus basement at the 'Backfield' site, Goldsmiths College, Lewisham Way SE14, incorporating terracing/roof terraces, to provide a lecture theatre, cafe, teaching rooms/studio, offices and associated facilities, together with the removal of trees, the repositioning of tennis courts and boundary treatment.”</p>	<p>Granted – 03/03/2009</p>	<p>Description of Development highlights that non-educational uses ‘offices/café’ exist within the ‘educational building’.</p> <p>Officers Report assesses all policy against education, rather than any mention of office/business policy. No mention of a sui generis land use.</p> <p><b>S106 references development being a construction of a two to four storey educational building – incorporating spaces we would call ancillary (strictly not sui generis) – cafes, offices, associated facilities.</b></p> <p><b>Application repositions tennis courts, yet there is no mention of these being a leisure use class / anything not ancillary to the main educational use of the building.</b></p>
<p>4) a) Bush House, South East Wing, 300 Strand London, WC2R 1AE 17/00660/FULL</p>	<p>Granted - 22/03/2017</p>	<p>Delegated Officers Report:</p> <p>‘KCL have a 50 year lease on Bush House and the adjacent group of buildings (known as the Aldwych Quarter). Planning permission was granted in July 2015 for use of all these buildings (with the</p>

“Refurbishment of existing stone and bronze-work to entrance portico and building frontage; new level access to Strand entrance incorporating ramps, handrails and pass doors; replacement of doors to East and West of the portico with matching glazed doors in bronze coloured frames; replacement of existing single glazing units with new double glazed units all in connection with use of the ground floor retail area as either office (Class B1), restaurant (Class A3), education (Class D1) or combination of office (Class B1) and retail (Class A1).”

exception of the ground floor arcade of the Centre Block of Bush House, the subject of the current application) for flexible B1/D1 purposes. Planning permission was granted in December 2012 and subsequently renewed in August 2015 for the use of the ground floor arcade in Bush House for either office (Class B1), restaurant (Class A3), or combination of office (Class B1) and retail (Class A1) purposes. At that time, this part of Bush House was not required by KCL for educational purposes. However the situation has now changed and **KCL do now need to decant the student union shop and other related activities into this space. In order to be able to do so, it is necessary to add D1 education use to the list of flexible uses which can be carried out in this part of the building.** As the whole of the rest of the Aldwych Quarter can be used for D1 education there are no policy objections to this subject to a condition to restrict the D1 use to education use only.’

‘A condition exists stating ‘Notwithstanding the provisions of Class D1 of the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that class in any statutory instrument revoking or re-enacting that order) the Class D1 use approved shall only be used for the provision of education and no other use within Class D1.’

This points to the fact that when the student union was required in this space, D1 use was added to the list of flexible uses. This was not objected to as long as a condition to restrict the D1 use to education use only was input. References made to the wider D1 use within the Aldwych Quarter hinting a similar planning justification to the restrictive covenant that exists over the No 1 Estate, for which the Site resides within.

4)  
b) Boland House, Guy’s Campus, London SE1 9RT

Granted  
09/12/2015

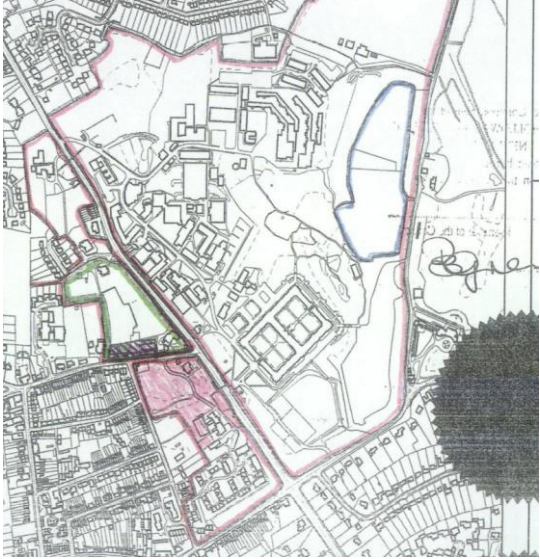
The submitted Planning Statement considers the Student Union to be Use Class D1. See below extract:

15/AP/3465

“External alterations and refurbishment of part of the basement, ground, and first floors of Boland House to create a museum/gallery (Class D1). Change of use from

Use Class	Type of Use	Existing gross internal floorspace (sq m)	Gross internal floorspace to be lost by change of use (sq m)	Total gross internal floorspace proposed (including change of use (sq m)	Net additional gross internal floorspace following development (sq m)
A3/A5	Restaurant / Hot Food Takeaway (McDonald’s)	361	361	0	-361
D1	Student Union	2,513	1,713	757	-1,756
D1	Gallery	0	0	2,117	2,117

<p>A3/A5 (restaurant and hot food takeaway) to Class D1 (museum/gallery)of the part ground floor in addition of the lift structure for Great Maze Pond elevation; landscaping works to Guy's Courtyard and all necessary and enabling works.”</p>		
<p>5) London School of Hygiene &amp; Tropical Medicine.</p>	<p>N/A</p>	<p>No physical student union identified</p>
<p>6) Queen Mary University of London.</p>	<p>N/A</p>	<p>No relevant planning history.</p>
<p>7) Royal Academy of Music - 34 Marylebone Road London NW1</p> <p>15/03010/FULL</p> <p>“Removal of existing non original front steps to the Academy and creation of new access ramp built on the existing roadway in front of the building to create level access into the building and associated internal alterations. The widening of the access road from Marylebone Road onto the Academy's land. New permeable road surface to entire access road. Removal and replacement of one tree to the forecourt frontage of the building.”</p>	<p>Granted - 22/03/2016</p>	<p>Officers Report: <b>“In land use terms the provision of disabled access to this education use is supported”</b>.</p>
<p>8) Royal Holloway, University of London, Egham Hill.</p> <p>RU.97/1140</p> <p>“Construction of buildings totalling 37,830 sq.m., including replacement of temporary buildings, all for educational purposes (Classes C2 &amp; D1) together with associated car parking, hardstandings, footbridge and internal access roads.”</p>	<p>Granted - 20/06/2002</p>	<p>S106 notes that the area shown below in blue “should be made available to and retained for use by local clubs and societies for recreational and sporting purposes only” – <b>does not reference the need for a leisure use class.</b></p>

		 <p>All the buildings included as part of the proposals fit into a C2/D1 use class – meaning that anything that sits outside of this (offices, parking) is considered ancillary.</p>
<p>9) School of Advanced Study.</p> <p>2013/0706/L – “Internal refurbishment works to stairwells and creation of new library area within existing building (Class D1)”</p> <p>2011/0209/L – “Internal alterations to accommodate the erection of 3 pairs of flush acoustic doors and frames into existing openings at ground floor level Senate House (Class D1), between the MacMillan Hall and the servery.”</p>	<p>Various</p>	<p>No physical student union identified. Some suggestion there is some form of student registry within Senate House – for which Camden consider D1.</p>
<p>10) SOAS University of London.</p> <p>2009/5926/L</p> <p>“Works including relocation of Students' Unions staircase, conversion of existing store and office to form new Unisex WCs, creation of new music room. Installation of new AHU's between Students' Union and Research Block and</p>	<p>Granted - 05/03/2010</p>	<p>Description of development notes a D1 use. Application form makes no mention of the building being D1 which suggests that this is LB Camden's decision to include this following its perception of the site.</p> <p>Application form notes the entire building as being D1 within the 'non residential floorspace' section.</p>

<p>installation of mechanical plant at ground floor level to front elevation and installation of heat pump [2 Daikin RXYQ24P] on roof of building (Class D1).”</p>		
<p>11) Antisoma Building, St Georges Hospital, Cranmer Terrace, SW17</p> <p>2008/1753</p> <p>“Outline application for demolition of existing two storey Antisoma building and construction of five-storey building providing library, teaching and office floorspace and ancillary café for St Georges University of London medical school. Application is for access, scale and layout, with appearance and landscaping reserved.”</p>	<p>Granted - 22/07/2008</p>	<p>Planning Register refers to the space as D1.</p> <p>Committee Report notes <b>“the provision of the additional retail floorspace and café is acceptable despite the building not being within a town centre, given that they are proposed for student use and not the general public’.</b></p> <p>‘The layout of the building is considered to be appropriate, with a mixture of uses at ground floor level, a library at first floor level and then the teaching and office areas on upper level’.</p>
<p>12) The Institute of Cancer Research, London.</p>		<p>No physical student union identified</p>
<p>13) The London School of Economics and Political Science. - Sheffield Street London WC2A 2AE</p> <p>10/01617/FULL</p> <p>“Demolition of existing buildings. Erection of higher education building (Class D1) on behalf of the London School of Economics (LSE) accommodating new Students' Centre, comprising seven storeys, two basement levels and associated hard landscaping.”</p>	<p>Granted – 26/04/2011</p>	<p>Description of Development recognises a D1 use class.</p> <p>Committee Report notes</p> <ul style="list-style-type: none"> <li>- “The proposed building incorporates a number of <b>complementary student services including the Students’ Union</b> offices, a learning café, a main events space, a multi-faith prayer centre, a pub, advice facilities, media centre, gym and accommodation and careers offices’.</li> <li>- ‘The Students Union would like to expand the current space allocation for all existing facilities, incorporate new facilities and house the whole of the Student Union under one roof.’</li> <li>- <b>‘The proposed use of the floors is as follows:</b> <ul style="list-style-type: none"> <li>■ Basement – Large events space and plant.</li> <li>■ Basement mezzanine – Events space and plant.</li> <li>■ Ground – Entrances and pub.</li> <li>■ First – Café, Activity centre, meeting space.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>■ Second – Multi-faith prayer facilities and media centre.</li> <li>■ Third – LSE Residences, Advice, Student Union offices/workspaces.</li> <li>■ Fourth – Gym and changing rooms.</li> <li>■ Fifth – Exercise studios, careers services &amp; green roof.</li> <li>■ Sixth – Careers centre, Café/Juice Bar &amp; Roof garden.’</li> </ul> <p>- ‘The proposed redevelopment would create 5132sqm of educational floorspace with a net additional uplift in floorspace of 2667sqm, most of which (2060) is below ground floor level. The proposals include, amongst other complementary uses, a bar and events space. <b>If the event space (460sqm) was a separate independent use, it could be considered under UDP Policy TACE 9 covering entertainment use</b> which may be permissible and where permission will only be granted where the City Council is satisfied that the proposed development has no adverse effect upon residential amenity, local environmental quality of the character of function of its area. <b>In this case, the events space is considered to be an “ancillary” function of the Student Centre forming only 9% of the total floorspace and is a common function on University campuses.’</b></p>
14) The Royal Central School of Speech and Drama.	N/A	No physical student union identified.
15) The Royal Veterinary College.	N/A	No relevant permission.
16) University College London Students' Union UCL, 25 Gordon Street, London, WC1H 0AY  2015/1281/P  “Erection of a 6 storey building and excavation works to create a 3 storey basement, comprising a head and neck outpatient hospital (Class D1) following demolition of the former UCL Student Union and Royal Ear Hospital buildings.”	Granted – 20/01/2016	<p>Committee Report notes:</p> <ul style="list-style-type: none"> <li>- “Land Use Details:</li> <li>- Existing D1 Non-Residential Institution 3433.6m<sup>2</sup></li> <li>- Proposed D1 Non-Residential Institution 10,683m<sup>2</sup></li> <li>- <b>It is understood the lawful use of both buildings are D1 (non-residential institutions), the proposed use as an outpatient hospital would also fall within the D1 use class, therefore there is no material change of use at the application site.”</b></li> </ul>

17) University of London Institute in Paris.	N/A	No relevant permission.
<p>18) University of London Institute of Education</p> <p>2012/5349/A - "Installation of externally illuminated canopy sign to front elevation of educational institution (Class D1)."</p> <p>2013/2713/P – "Addition of two louvres and extract ducts at first floor level of loading bay elevation of education building (Class D1)."</p> <p>2013/5283/L – "Internal alterations at service level (level 2) to provide ancillary kitchen facilities (Class D1)"</p> <p>2018/0257/L – "Proposal: Installation of a temporary marquee on the rear terrace of the Institute of Education for use as an ancillary student union bar, for a 12 month period."</p> <p>2018/2874/P - Refurbishment of Levels 2, 4 and 5 of Wing A to provide a replacement students bar to lv.4 (Use Class A4) as well as new teaching and study spaces, staff offices and associated facilities (Use Class D1). External alterations incl. to additions/ relocation of external doors to terraces; replacement terrace rooflight; raising level of terraces to allow for added insulation; and to raise height of existing terrace balustrades. Replacement HVAC system involving the removal of existing plant to lv.4 terrace and relocation to new plant room with associated</p>	Various	<p>Planning register 'Application details section' notes an existing land use of D1.</p> <p>Descriptions of development note a D1 land use.</p> <p>2019/3624/P</p> <p>Delegated Report notes:</p> <ul style="list-style-type: none"> <li>- "Planning permission is sought for external alterations to a section of the building at lower ground floor level to convert an existing storage space to a security office. <b>No change of use is proposed as the office would remain ancillary to the main university use."</b></li> </ul>



<p>installation of external louvres.</p> <p>2019/3624/P - External alterations including removal of existing mesh cladding and installation of curtain wall, glazing, louvre panels and double door set associated with the conversion of existing garage area to create an internal site office to university (Use Class D1)</p>		
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*Table 3. Relevant information from other Member Institution student union buildings.*

### **Conclusions and Accompanying Documentation**

The review of the Site’s planning history and an exercise undertaken into the planning records held by other University London Member Institutions has been undertaken by DP9 and it is our consideration that the evidence supports the view that the Site exists within an F1 use (previously D1), with all uses within the Site (supporting student facilities and supporting office space) being ancillary to this primary educational use. It is therefore asserted that there has been no breach of enforcement on this site relating to any change of use.

The planning history on the Site itself notes one instance in which direct reference to a D1 use was made to, and accepted by, LB Camden. This evidence is compounded with the existence of the restrictive covenant over the wider estate that only permits the creation and management of buildings for the direct purpose and use of the University of London (and by association its Member Institutions), as well as the fact that the University of London as freehold owner has submitted evidence within this representation that they, having taken legal advice, support the view that the building is F1 and wrote this into the details of the head lease. It is our understanding, as well as the understanding of the University of London, that the ancillary uses within the cannot be operated separate to the University due to the existence of this restrictive covenant.

DP9’s own undertakings into the planning history of other member institutions’ student unions has highlighted how Local Authorities, including LB Camden, have previously considered the provision of ancillary uses within a building that contains a primary use. In the case of LSE’s student union building at ‘St Philips Building’, the proposed use of the floors that has been described in further detail in the table above includes no direct teaching and learning floorspace and instead includes two event spaces, a pub, two cafés, an activity centre, exercise studio and gym, meeting spaces, prayer facilities and a media centre, student union offices/workspaces, a careers centre and roof garden – despite this these spaces are considered ancillary to the main educational use of the site. The predominant use of our Site, in comparison, is for teaching and learning – this floorspace occupies more floorspace within the building than any other land use. Furthermore, this exercise has revealed that LB Camden have argued, under ref. 2015/1281/P, that UCL’s former Student Union building was D1 (now F1).

Alongside this Covering Letter, this representation is accompanied by the following information:

- **Appendix A:** Supporting Letter from the University of London, as freehold owner of the Site, confirming their understanding of the Site as being Use Class F1;
- **Appendix B:** Supporting Letter from Gerald Eve, as rating advisor, confirming their view at the time of their site-visit;
- **Appendix C:** Supporting Letter from Avison Young, as valuation provider, confirming their understanding of the Site when evaluating the property;
- **Appendix D:** Supporting Letter from Savills, advising on their thoughts during the time carrying out inspections;
- **Appendix E:** Supporting Letter from Wedlake Bell, as legal advisors to leasehold owner Birkbeck, confirming their understanding of the Site's Use Class as being F1 when advising Birkbeck's leasing of the Site.

We trust you have sufficient information to make a conclusion on this representation. Should you have any queries then please do not hesitate to contact Marcus Stuart or Barnaby Collins, of this office.

Yours faithfully,

DP9 Ltd.

**DP9 Ltd.**

## **Appendices**

**Appendix A:** Supporting Letter from the University of London, as freehold owner of the Site, confirming their understanding of the Site as being Use Class F1.

Dear Mr Xuereb  
Director of Estates  
Birkbeck University of London  
Malet Street  
London  
WC1E 7HX

29 November 2022

## **Student Central**

This letter is written to confirm the understanding of the University of London (UoL), as freehold owner of Student Central on Malet Street, of the use of this building following its role in the recent leasing of the accommodation to Birkbeck College, University of London.

This letter provides some historical context regarding the University of London, its member institutions and the Student Central building.

The University of London is a federal university, meaning that it has historically operated as a collegiate university with all the teaching carried out by the colleges (now defined as its 'member institutions'). UoL now consists of 17 independent member institutions who are all legally incorporated higher education institutions. Birkbeck is one of the member institutions of the University of London.

As Member Institutions have become increasingly autonomous their own separate student bodies have developed and become organisations in their own right, this resulted in them becoming significantly less reliant on UoL services, clubs, and student union services and facilities and facilitated the decline of the 'combined' union accommodation at Student Central.

As a result of the above, the University of London tendered potential lease-holder occupiers for the Student Central Space in 2021. UoL was responsible at this time for the management and maintenance of the pool on the lower ground floor which could be utilised by students of UoL. It had been acknowledged that it was financially unviable to continue to manage and maintain the swimming pool and the COVID-19 pandemic finally led to the closure of this space.

It should be noted that before closing the pool, UoL informed other member institutions and offered these parties the opportunity to manage and maintain the pool. This offer was rejected by the member institutions.

The building was tendered to member institutions on the basis that it would continue to be used for the purpose of student education in line with restrictive covenants over the wider site (the 'No 1 Estate'), held by UoL under freehold title. The No 1 Estate is subject to restrictive covenants in favour of the Bedford Estate which are contained in a Transfer dated 24 June 1927 made between (1) The Duke of Bedford and (2) University of London. It is understood that this Covenant has been discussed with the Council and accompanies Birkbeck's representation to the Council.



The designation of the site as F1 educational use is consistent with the restrictive covenants which with regard to use, state that no buildings may be erected on the land "except University and College Buildings in connection with the University of London...and no building shall at any time be used except for the purpose of such University and College buildings".

It is also consistent with the primary purpose and charitable objects of the University of London and of its members institutions which are based on the advancement of education. Additionally, the University of London Union's object, as laid out in its constitution, was the advancement of education of Students at the University of London for the public benefit.

Birkbeck, in seeking to expand its teaching space and reduce reliance on rented teaching rooms in dispersed locations, was considered to meet the tender criteria of this building through its promotion of an effective and efficient plan for the site. This desire was included as part of Birkbeck's bid for the building and it was accepted by UoL not only in the recognition that it would enable the facilitation of Birkbeck's ambitions for educational expansion in a sustainable location, but also due to our own understanding of the benefits that this would have on the wider Bloomsbury community and other member institutions due to Birkbeck facilities being regularly used by fellow member institutions located within Bloomsbury. It was accepted that this site would benefit Birkbeck as a location to boost their educational accommodation in particular over other member institutions due to the site being located right at the heart of the Bloomsbury campus and immediately adjoining Birkbeck's main building.

It should be noted that the leasing of the site to Birkbeck was carried out on the understanding that it comprised an F1 educational use in accordance with the historical usage of this site. UoL have always considered the provision of education (historically Use Class D1 – now F1) to be the primary usage of the building, and we therefore understood Birkbeck's intentions for the site to be wholly in agreement with this land use. Accordingly, an F1 Use Class was specified within the defined use terms of the head lease that was issued to Birkbeck and this was in accordance with legal advice received by both ourselves and Birkbeck.

Yours sincerely,

Rita Akushie  
Pro Vice-Chancellor, Finance and Operations

**Appendix B:** Supporting Letter from Gerald Eve, as rating advisor, confirming their view at the time of their site-visit.



**GERALDEVE**

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Daniel Xuereb MIWFM TMIET  
Director of Estates  
Birkbeck  
Malet Street  
Bloomsbury  
London  
WC1E 7HX

24 November 2022

**Our ref:** CWA/R01/8099/65

Dear Mr Xuereb

**Student Central**

Further to our recent conversation, I am writing to set out the historic position of Student Central in respect of its treatment for business rates.

Background to Gerald Eve's Experience

By way of background Gerald Eve LLP has acted for the University of London on rating matters for at least the last 30 years during which time we have dealt with the Student Central building as part of managing the University's rates assessments.

Gerald Eve has separately advised Birkbeck College on rating matters since the 2000 Rating Revaluation.

Treatment for Rating Purposes of Student Central

We confirm that during the period of our involvement up to July 2021, for rating purposes, Student Central was in the single occupation and control of the University of London. Since its construction it has therefore formed part of a single hereditament, with the University of London's other accommodation, within in the University Precinct.

This treatment of the Student Central building, as part of a single hereditament along with the University's wider operational estate, reflects the status of the building as forming an integral part of the University's estate and use in furtherance of the University's purposes of higher education.

In July 2021 the building was purchased by Birkbeck College and occupied by it, we are currently seeking for the building to be transferred from the University's rating assessment to that of Birkbeck. This reflects the continued use of the building for higher education purposes.

Do let me know if you need any further information in respect of the building's history.

Yours sincerely

**Charles Wachter**  
Partner

**Appendix C:** Supporting Letter from Avison Young, as valuation provider, confirming their understanding of the Site when evaluating the property.



Our Ref:       Ref  
Your Ref:      Ref



Platinum  
member

18 November 2022

Estates Department  
Malet Street  
Bloomsbury  
London  
WC1E 7HY

For the attention of: Daniel Xuereb - Director of Estates

Dear Sirs

**Property:** Student Central, Malet Street, Bloomsbury, WC1E 7HY

You have requested on our view on how the building was used and operated when carrying out our valuation in 2020.

Instructions were received on 30 November 2020 to undertake a valuation of the property for acquisition advice purposes.

The property was inspected on Wednesday 2nd December by Ben Whittington MRICS, an RICS Registered Valuer within the Valuation Consultancy Department of our London (Gresham Street) office. Access was available to all parts of the property other than the first floor as this was being used as a COVID19 testing area for the students.

During the inspection, Ben noted that there were a lot of students in the general area and recall some walking around within the building. The rooms were all set up as classrooms. The "theatre" was being used as a covid testing facility. The study rooms were being used by students. He formed the impression that the building was clearly used for educational purposes and that formed the basis of our valuation and report.

We would draw your attention to the Description paragraphs with our report dated 9<sup>th</sup> December 2020 and reproduce this below;

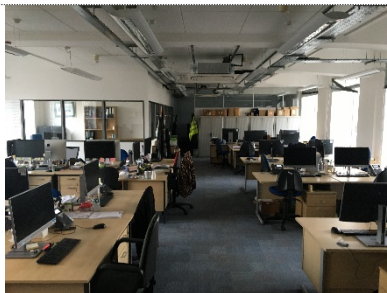
*The subject property is a 1950s building constructed over basement, lower ground, ground and 4 upper floors. The building is "U" shaped and is constructed with brick elevations with metal framed windows under a flat roof. The building is currently used as part of a university campus, providing classrooms, lectures halls, offices and a student leisure centre.*

### *Fourth Floor*

*The fourth floor is part owner occupied and part occupied by University College London (UCL) and is primarily used as office space. The floor is finished with painted & plastered walls, suspended ceilings and a carpet tiled floor. The space is lit with fluorescent lighting, heated by way of wall mounted radiators and benefitted from perimeter trunking. There is also a staff kitchen and amenity area with standard kitchen fittings. Main access to this floor is by way of a central staircase with a single lift which we understand is for staff and disabled access only.*



4<sup>th</sup> floor main desk



4<sup>th</sup> floor offices



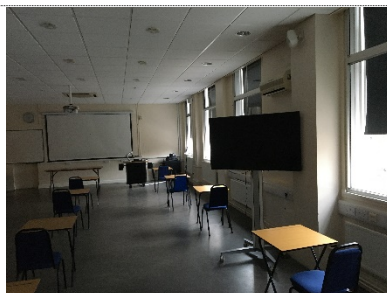
4<sup>th</sup> floor staff kitchen

### *Third Floor*

*This floor is part owner occupied and part occupied by UCL and is primarily used for educational purposes. The floor is to a similar specification as the floor above with painted & plastered walls and ceilings, a mix of carpet and laminate flooring and perimeter trunking. On this floor, there is also a former sports hall which is now used as a large teaching/lecture hall which has a wood panelled floor.*



Sports hall/Lecture Hall



Classroom



Circulation Area

## Second Floor and Mezzanine

The second floor is part owner occupied and part occupied by UCL and the mezzanine is occupied by UCL. These floors are mainly used by students as study areas and tutorial rooms. These floors are finished to a similar specification as the floors above. The second-floor mezzanine is split into two parts, with one part accessed via the northern core and the other via the southern core.

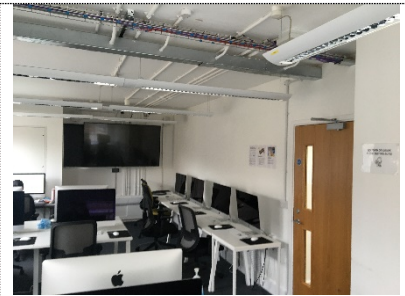
To the north part of the second floor there is access to the upper seating of the first-floor theatre.



2<sup>nd</sup> floor theatre seating



2<sup>nd</sup> floor teaching room



2<sup>nd</sup> floor mezzanine space

## First Floor

The first floor is fully owner occupied. We understand the floor is used for educational purposes and has a student bar and restaurants. On the date of inspection, we were unable to inspect this floor as it was being used as a COVID testing facility for the students. We assume the accommodation was to a similar condition to the other floors.



1<sup>st</sup> floor student bar



1<sup>st</sup> floor student bar

## Ground Floor

The ground floor is part owner occupied and part occupied by University Vision and Birkbeck College. The floor is mainly used as a reception with a café, students opticians, university store (and printing services) and offices. The floor is largely finished with painted & plastered walls and ceilings, a mix of carpet tiles and linoleum flooring, suspended ceiling and perimeter trunking.



Ground floor circulation



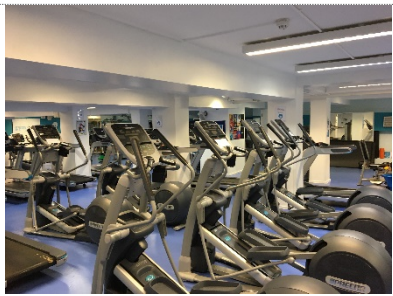
University shop



Birkbeck College office

### *Lower Ground and Basement Floor*

*The lower ground and basement floor are fully owner occupied and is used for leisure purposes with a gym, sports hall and a 33-metre pool. The lower ground floor has a lower floor to ceiling height of just over 2 metres. The gym has a standard fit-out with changing rooms to the basement floor. The swimming pool is over the basement and lower ground floor. Natural light is provided by way of sky lights to the rear elevation.*



Gym



Sports Hall



Swimming Pool

We would also draw your attention to various paragraphs within the planning and valuation sections of our report;

### **Planning**

*We have provided below a summary of the planning history for the property which has been taken from the LBCC Planning Portal/or other source. The most recent pertinent application is:*

- *'External alterations to provide step-free access to existing roof terrace of university building (Use Class D1) including replacement of canopy as well as the installation of an enclosed platform lift and automatic bi-fold doors'. This was granted in March 2019.*

*There are no other pertinent applications, and therefore we have assumed the property is being used for its intended use.*

### *Planning Use*

*On 21st July 2020, the government published The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Amendment Regulations), which became effective from 1st September 2020. Of relevance to the subject property, the amendments include the abolition of Part D of the Use Classes Order and its replacement with Class F. Schedule 2 of the Amendment Regulations 2020 identifies that Class F includes the following:*

#### Class F.1 Learning and non-residential institutions

*Any use not including residential use—*

- a) for the provision of education,*
- b) for the display of works of art (otherwise than for sale or hire),*
- c) as a museum,*
- d) as a public library or public reading room,*
- e) as a public hall or exhibition hall,*
- f) for, or in connection with, public worship or religious instruction,*
- g) as a law court.*

### **Valuation**

- The subject property is in the heart of the University of London campus with the area supporting mixed uses.*
- The property has a F1 use and it appears unlikely that a change of use to offices would be permitted, given the London Borough of Camden's protection afforded to F1 use. It is normal practice to review evidence from historic years given the scarcity of F1 evidence.*
- We have looked at both investment and vacant possession sales to derive our valuation of the subject property. There is limited comparable evidence of F1 educational use investment sales and the yields which investors are willing to transact at vary significantly on the location of the property and in particular the occupant and their covenant strength*
- The building is considered a study hub by students and provides circa 76,000 sq ft educational and leisure uses to be used by students.*
- Camden Borough council aim to retain F1 uses in the borough and therefore the building will lend itself to continue its existing use.*
- From the evidence produced in Section 21 of this report, the general tone for F1 properties in central / inner London range from circa £300 per sq ft – £800 per sq ft depending on location, quality, condition and size.*

### *Material Valuation Uncertainty*

*In respect of the F1 leisure/educational use sector, as at the valuation date we continue to be faced with an unprecedented set of circumstances caused by COVID-19 and an absence of relevant/sufficient market evidence on which to base our judgements. Our valuation of F1 leisure/educational uses are therefore reported as being subject to 'material valuation uncertainty' as set out in VPS 3 and VPGA 10 of the RICS Valuation – Global Standards. Consequently, in respect of these valuations less certainty – and a higher degree of caution – should be attached to our valuation than would normally be the case.*

In conclusion, at the date of our report, we valued the building as a university building with an educational use because in our opinion that was clearly the use of the building when we inspected it and any other uses were ancillary to the main purpose of education. We were and still are of the opinion that a notional purchaser would have reflected that educational use in preparing their bid.

We trust the letter assists you.

Yours faithfully



**Robert Baldwin MBA MRICS**  
**Principal**  
**0207 911 2342**  
**robert.baldwin@avisonyoung.com**  
**For and on behalf of Avison Young (UK) Limited**

**Appendix D:** Supporting Letter from Savills, advising on their thoughts during the time carrying out inspections.

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# Building Survey Report - Summary

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Student Central, Malet Street, London WC1E 7HY





# Building Survey Report

Student Central, Malet Street, London WC1E 7HY



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## Introduction

Savills were appointed by Birkbeck, University of London in November 2020 to carry out inspections of the property and prepare a Technical Due Diligence Report as part of their proposed purchase of the building.

We have been requested to provide a summary of our key findings, particularly in relation to the condition of the structure, fabric and main mechanical & Electrical plant installations. Birkbeck have also sought our confirmation regarding usage of the building at the time of our inspections. This is set out below.

## Property use

We undertook inspections of the building on 2 December 2020.

We inspected the main areas of the property except for the 1st floor and ground floor areas adjoining the north and south stair cores. This was due to this area being operated as an asymptomatic COVID-19 testing centre for students at the time.

The ground floor contained some office space that was leased to Birkbeck and also accommodated the reception as well as other facilities for the benefits of the student population, such as a café, student opticians and print shop. These units were all closed at the time of our inspection due to the COVID-19 pandemic and the associated lack of students on the campus.

A gym, sports hall and double height swimming pool were all located on the lower ground level of the building. As above, this space was not in use due to the COVID-19 pandemic and the resulting lack of students but we understood that these were operated previously by the University of London for the use of their students.

The majority of the Site is contained within the upper floors. These upper floors looked to provide educational / teaching spaces to UoL students. The first floor was utilised for student bars, restaurants and there also existed a theatre space which extends to the second floor due to its double height. The second, third and three additional mezzanine floors contained within the wing of the building were all used for teaching and learning spaces, as well as associated offices for staff. The fourth floor contained office accommodation which was leased to member institutions and utilised for the purpose of student wellbeing and career guidance.

# Building Survey Report

Student Central, Malet Street, London WC1E 7HY



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## **Structural & Fabric Elements**

When the property was built in 1955, we consider it was designed and constructed to good standards.

Whilst the main structure and substructure remain in sound overall condition, the key fabric elements including external walls, windows and roofs display minimal improvements and/or replacements and are largely original being some 57 years old. In overall terms we would consider that the building has gone beyond its serviceable and useful life.

A major refurbishment and replacement programme is required if the property is to continue to provide usable facilities comparable with modern buildings. Attention will need to be given to improving thermal insulation standards of the entire building which are currently minimal, in keeping with a building of this age.

Given that the property is now some 67 years old, it needs to be recognised that it will have increased maintenance requirements, compared to a new build property. This is amplified by the approach taken by vendor, University of London which has been to address essential items of maintenance only. As a consequence, there is a backlog of normal maintenance and repair items which require attention to safeguard the continuing life of the building.

## **Mechanical & Electrical Installations**

As stated above, simultaneous inspections of the property were undertaken in December 2020 and the following comments are based on the condition of the mechanical, electrical and public health services at that time.

The services as installed are generally fragmented, aged having exceeded their economic life cycle, and, in poor condition overall. Heating, cooling and ventilation systems tend to be localised as opposed to centralised which adds inefficiencies to the equation. In addition, the future heating and cooling requirements of the building will necessitate relatively urgent consideration to provide continued and sustainable operation of these services to the occupants.

Modular lighting is the principal means of illumination throughout and with the ban on the sale of fluorescent tubes from September 2023 a review and upgrade of the lighting installation will feature heavily in the short and medium term capital expenditure plans.

Whilst the passenger lifts were defect free at the time of inspection, they date from 2001 and have exceeded their economic life cycle and should undergo full replacement.

In conclusion, a comprehensive forward strategy will need to be developed for energy efficient operation of the building to meet Government requirements and to best serve the needs of a fully functional educational establishment.

# Building Survey Report

Student Central, Malet Street, London WC1E 7HY



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## Conclusion

The design and construction of the building in the 1950s was undertaken to robust standards meaning that the base structural frame and associated structural elements still has intrinsic economic life. It does need to be recognised though that no substantive repairs / modernisation has been carried out in recent years and as a consequence, there is a backlog of maintenance, repair and refurbishment works which require attention to safeguard the continuing life of the building. This will entail significant capital expenditure to include mechanical & electrical plant and equipment, new roof coverings and windows and attention to improving and upgrading the thermal efficiency of the building. Internally too, there is a need to refurbish and upgrade the accommodation provided so that this is comparable with modern, newly designed buildings.

Jeremy Kingston

Michael Tharp

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**Appendix E:** Supporting Letter from Wedlake Bell, as legal advisors to leasehold owner Birkbeck, confirming their understanding of the Site's Use Class as being F1 when advising Birkbeck's leasing of the Site.

BY EMAIL [d.xuereb@bbk.ac.uk](mailto:d.xuereb@bbk.ac.uk)

Dan Xuereb  
Birkbeck Estates  
Malet Street  
London  
WC1E 7HX

Date 30 November 2022  
Our ref MIS/013770.0112/HAWLA  
Direct Dial +44 (0)20 7395 3000  
Direct Fax +44 (0)20 7395 3100  
Email [msinha@wedlakebell.com](mailto:msinha@wedlakebell.com)

Dear Dan

## Student Central London

I have researched the position regarding past uses of Student Central in so far as this is available from the information we received before the grant of the lease of the whole building to Birkbeck in July 2021.

The leases reveal that the building has been used for a variety of different uses but in each case the use is consistent with either teaching or providing services ancillary to or in connection with the primary educational use of the building.

Premises: Electricity substation located on the ground floor of the building

Tenant: Originally London Electricity Board now London Power Networks PLC

Lease dated: 11 September 1952

Term: 60 years from 1 April 1953. The lease expired on 31 March 2013 but LPN remains in occupation as a statutory tenant under the Landlord and Tenant Act 1954. The lease is registered at the Land Registry under title number LN101913.

Break Clause: Landlord may break on giving not less than 12 months' notice if the premises are required as part of a redevelopment scheme but the Landlord must provide suitable alternative premises for use by the electricity supplier

Renewal rights: The lease has statutory renewal rights under the Landlord and Tenant Act 1954. There is no evidence that this has been implemented

Rent: 1s 0d (5p) pa

Rent review: None

Permitted Use: Use as an electricity transformer station for the distribution of electricity

Premises: ATM Machines and service rooms on the ground floor of the building

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DX 307441 Cheapside | [www.wedlakebell.com](http://www.wedlakebell.com)

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Associated offices  
throughout Europe

Tenant: Notemachine UK Limited

Lease dated: 4 March 2014

Term: 4 March 2014 – 31 July 2019. Lease has expired and the company has vacated.

Permitted Use: Use as one or two ATMs with serving room behind.

Note: Planning permission was granted for this use

Premises: Ground Floor

Tenant: University Vision

Lease dated: 13 August 2019

Term: 1 August 2019 expiring on 31 July 2020. Lease has expired and the company has vacated,

Permitted Use: Use as an opticians during normal business hours

Note: Planning permission was granted for this use

Premises: Part Ground Floor

Tenant: Birkbeck College

Lease dated: 30 April 2018

Term: 13 November 2017 expiring 12 November 2019.

Permitted Use: the provision of services to students ancillary to education use within Class D1 of the Use Classes Order 1987.

Premises: Part Second Floor, Second Floor Mezzanine and Part Third Floor

Tenant: UCL:

Lease dated: 10 September 2019. This lease was a renewal of earlier leases granted to UCL on the same terms in 2017 and 2018

Term: 1 August 2019 expiring 31 July 2023 but terminated early on service of a break notice

Permitted Use: Education within Class D1 of the Use Classes Order 1987

Premises: Part Fourth Floor

Tenant: UCL

Lease dated: 17 September 2015. Lease is registered at the Land Registry under title number NGL954617.

Term: 17 September 2015 expiring on 31 July 2025 but terminated early on service of a break notice

Permitted Use: Offices ancillary to education use within Class D(1) of the Use Classes Order 1987

The Lease of the whole building granted by University of London (UoL) to Birkbeck in July 2021 restricted the use of the building to the following uses each of which is consistent with the use of the building for student teaching with associated ancillary and complementary uses.

Use (clause 5.11): The principal permitted use of the Property is the provision of education within the meaning of Paragraph F(a) of the Town and Country Planning Use Classes Order 1987 (as currently in force). However, you may in addition use the Property for uses which are ancillary to and complementary with this principal use. This is to allow for the provision of goods or services to staff and students of the College. Note that the lease includes an express declaration that UoL does not warrant that this use is permitted for planning purposes.

Enquiries of the local authority made in 2021 revealed that the authority (London Borough of Camden) has regarded the building as forming part of the University of London since at least 1945 when permission for the construction of the building now on the site was granted; it is described as the Students' Union Building

As regards the restrictions on the freehold title please note the following:

1. Student Central forms part of UoL's estate known as No 1 Estate. The No 1 Estate is held by UoL under a freehold title which is registered at the Land Registry under title number 325806. The No 1 Estate (also known as the Precinct) is shown edged in red on the attached plan.
2. No 1 Estate is subject to restrictive covenants in favour of the Bedford Estate which are contained in a Transfer dated 24 June 1927 made between (1) The Duke of Bedford and (2) University of London. These restrict both the erection of new buildings on the land and their use thereafter.

New buildings may not be erected on the land "except buildings which shall as regards elevation (but not so as to impose any limit on the height of buildings) to be in accordance with designs to be approved by" the Bedford Estate. In the event of a dispute the matter may be referred to the President of the RICS for arbitration.

3. As regards use, no buildings may be erected on the land "except University and College Buildings in connection with the University of London... and no building shall at any time be used except for the purpose of such University and College buildings". This means that essentially only Member Institutions of the University of London may occupy and use buildings on the No 1 Estate. Consequently, leases of the buildings on No 1 Estate are highly restrictive as regards the permitted use and also as regards alienation (outright disposal and underletting). In general terms buildings on the No1 Estate may only be occupied and used by Member Institutions of the University of London. However, UoL has relaxed this in some limited cases to allow educational institutions which are not Members of UoL to occupy as undertenants for limited periods.

I hope this is sufficient but please let me know if you require any more.

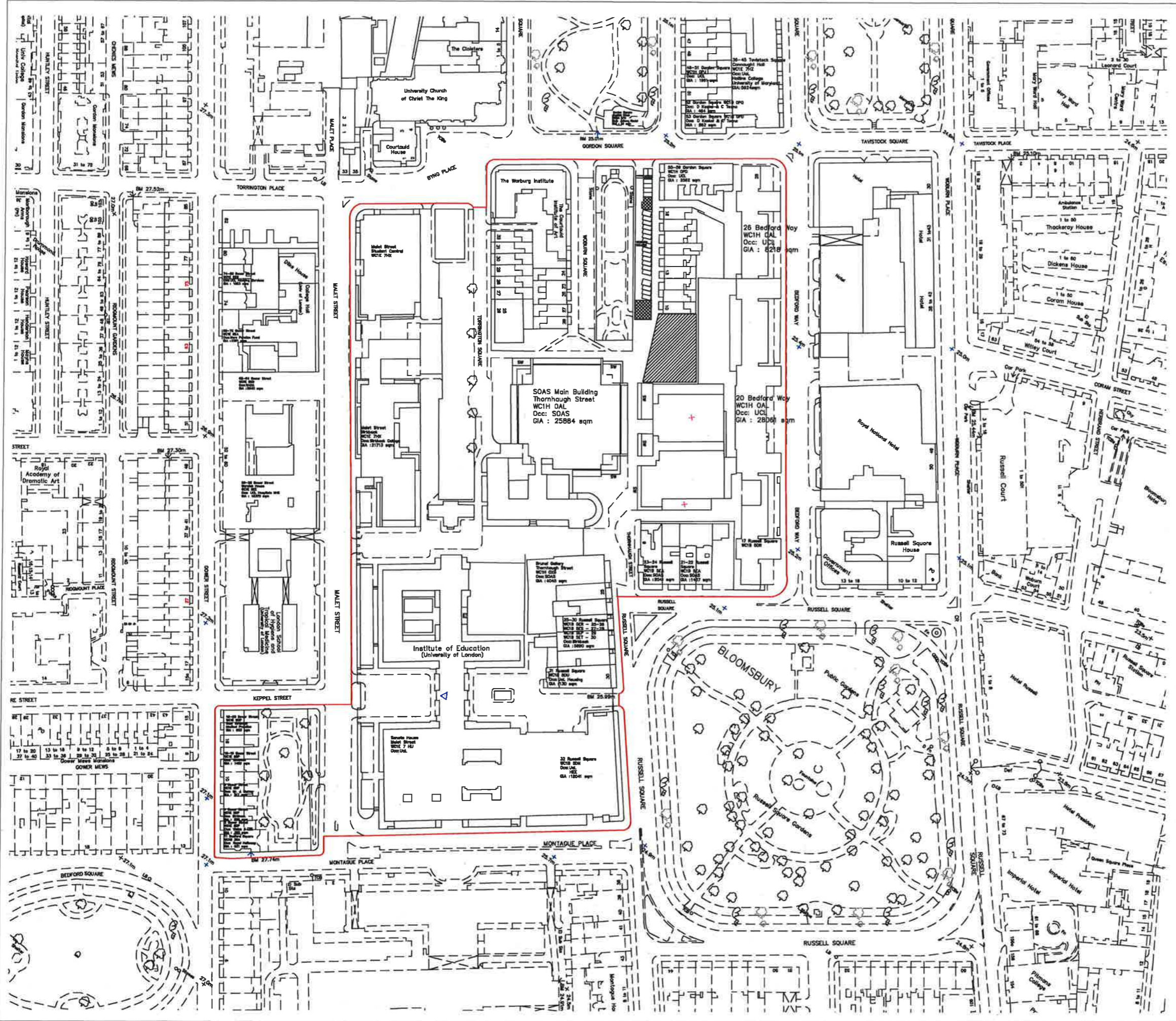
Kind regards

Yours sincerely



PP Michael Sinha  
Consultant





KEY  
 PRECINCT

UNIVERSITY OF LONDON  
 ESTATES & PROPERTY SECTION  
 SENATE HOUSE  
 MALET STREET  
 LONDON WC1E 7HU

UNIVERSITY OF LONDON  
 PRECINCT DEMISE

Drawn by P&FM SCALE 1:2000

MARCH 2019 Drg N°:UoL-1002



Appendix B - Planning Contravention Notice (PCN), issued by the Council to the Applicant dated 21 February 2023

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**  
The London Borough of Camden Council

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the  
PLANNING AND COMPENSATION ACT 1991)**

**PLANNING CONTRAVENTION NOTICE**

Address of the Land: Student Central Building, Malet Street, LONDON WC1E 7HY

1. It appears to the London Borough of Camden Council ("the Council"), being the local planning authority for the purposes of section 171C of the Town and Country Planning Act 1990 ("the Act"), that there may have been a breach of planning control in respect of the land described in Schedule 1 below ("the land").

2. The breach of planning control, which may have occurred, is specified in Schedule 2 below.

3. This notice is served on you as a person who-

- (1) is the owner or occupier of the land or has any other interest in it; or
- (2) is carrying out operations in, on, over or under the land or is using it for any purpose.

4. In exercise of their powers under Section 171C (2) and (3) of the Act the Council require you, so far as you are able, to give them the following information in writing *within twenty-one days*, beginning with the day on which this notice was served on you:

- (i) *State the proportion of the building used for teaching purposes over the last ten years;*
- (i) *State, what activities/uses have last occurred on each floor of the premises and when these uses started and other uses that preceded the latest one going back to at least 10 years. Please provide documentary evidence including floor plans showing the different uses;*
- (iv) *State how the bar, cafeteria and the auditorium on the 1<sup>st</sup> floor were used, were members of the general public allowed to use these facilities, on what terms and how many students and members of the public used them. Please provide documentary evidence and any information you may have that may help clarify this issue.*
- (v) *State how the retail and student support services on the ground floor were used, were members of the general public allowed to use these facilities, on what terms and how many non s. Please provide documentary evidence and any information you may have that may help clarify this issue.*
- (vi) *State how the sports facilities in the basement were used, were members of the general public allowed to use these facilities, on what terms and how many students and non*

*students used them. Please provide any information you may have that may help clarify this issue.*

If you wish to make-

(a) an offer to apply for planning permission, or too refrain from carrying out any use or activities; or

(b) any representations about this notice,

Please contact **Gary Bakall** on **020-7974-5618**

Dated: 20/02/23

Signed



Council's authorised officer

## **SCHEDULE 1**

Land to which this notice relates

Student Central Building, Malet Street, London WC1E 7HY

## **SCHEDULE 2**

Suspected breach of planning control

1. The unauthorised material change of use from a 'sui generis' mixed use comprising student union, student support services, bar, auditorium, cafeteria and sports facilities to teaching space within the F1 non-residential use class without planning permission.

### **WARNING**

1. It is an offence to fail, without reasonable excuse, to comply with any requirement of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1,000. Continuing failure to comply following a conviction will constitute a further offence.

2. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £5,000.

*ADDITIONAL INFORMATION*

3. If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular, they may issue an enforcement notice, under section 172 of the 1990 Act, requiring the breach, or any injury to amenity caused by it, to be remedied.

4. If the Council serve a stop notice, under section 183 of the 1990 Act, section 186(5)(b) of the Act provides that should you otherwise become entitled (under section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice, or had you otherwise co-operated with the Council when responding to it.





Appendix C - PCN Response and appendices dated 13 March 2013



Pinsent Masons

BY EMAIL ONLY: GARY BAKALL@CAMDEN.GOV.UK

Mr G Bakall  
Deputy Team Leader  
The London Borough of Camden Council

Our Ref: 699973.07000

DDI: +44161 2348306

E: beth.grant@pinsentmasons.com

13 March 2023

Dear Sirs,

**PLANNING CONTRAVENTION NOTICE**

**PROPERTY: STUDENT CENTRAL BUILDING, MALET STREET, LONDON WC13 7HY**

**OUR CLIENT: UNIVERSITY OF LONDON AND BIRBECK COLLEGE**

We act on behalf of both the University of London (**UoL**) and Birkbeck College (**Bbk**) who are respectively the freehold and long leasehold owner of the above Property.

We write in response to the Planning Contravention Notice (**PCN**) dated 20 February 2023.

**Preliminary Observations**

At the outset, our client would like to express its profound disappointment that the Council has considered it necessary to issue a PCN, despite our client and its planning consultants (DP9) having engaged in what it thought was constructive dialogue with the Council regarding the existing use of the Property. In particular, our client has cooperated with the Council in good faith by allowing them access to visit the Property and by providing detailed representations regarding the use of the building. By contrast, the Council has failed to provide any meaningful response to our client's representations and has refused to share the third-party representations that prompted these discussions and appear to have resulted in the Council's decision to issue a PCN.

The approach taken by the Council has made it difficult for our client to fully understand the true nature and cause of the Council's concerns and our client feels that a sensible next step would be a follow up meeting with the Council to discuss matters further once you have had opportunity to consider and digest the contents of this letter and accompanying PCN response.

The decision to issue the PCN is itself highly questionable and contrary to the Government's Planning Practice Guidance which states that a PCN may only be served when it appears to the local planning authority that a breach of planning control may have occurred. The PPG makes it

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clear that the PCN process should not be used to undertake an investigative trawl to satisfy the authority about what activities are taking place on a parcel or land. In this instance, we fail to see what potential breach of planning control the Council considers may have occurred at the Property, let alone lead it to the decision to issue a PCN particularly given that our client has been actively engaging with the Council.

### **Education Sector Precedent**

The approach being taken by the Council in this matter could also have far reaching implications for the wider education sector, particularly for the many higher education institutions operating within the Borough. In its assessment of the uses carried out at the property the Council appears to have adopted a very narrow interpretation of F1 educational use that extends solely to teaching. That is at odds with the definition of Class F1(a) which includes **any use** (not including residential use) for the provision of education.

It is important to note that educational uses take a variety of forms beyond traditional “classroom” teaching, particularly in relation to higher education institutions. Indeed, there are a variety of functions that could be carried out within a building which would fall within F1 educational use, including (but not limited to) making space available to teachers and students for discussion, meetings, examinations, conferences and research as well as offering support services to students and staff including (but again not limited to) printing and IT services, facilities and advice. All such activities play an important part in furthering the education of students and fall within an F1 Educational use.

It is also noted that it is commonplace for ancillary services to be included within educational buildings such as retail, leisure and food/drink facilities. Such functions are ancillary to the primary use of such buildings as is evidenced by the fact that they would not continue to operate if the educational use of the building ceased.

### **Extension of Time**

It is also noted that the Council has rejected our client’s request for an extension of time to respond to the PCN. This is again both disappointing and surprising given the collaborative approach that our client had thought was being adopted by both parties in respect of the Council’s previous informal enquiries. The urgency for a response to be provided within the 21-day timeframe is also highly questionable and disproportionate given that our client was co-operating with the Council.

As previously communicated to the Council, our client has experienced difficulties accessing some of the information requested due to staff illnesses and turnover. This leads to difficulties in responding to the PCN meaning that the response is therefore necessarily limited to the information that is available to our client at the present time. Our client reserves the right to add to this submission, should further information subsequently become available to them.

Notwithstanding the above and our client’s concerns regarding the Council’s approach in this matter, please find our client’s PCN Response in the appendix to this letter.

We trust that the information and supporting evidence set out in the Response demonstrates to the Council that:

- (a) no breach of planning control has occurred at the Property; and
- (b) the authorised use of the Property is for F1 educational use with ancillary office, leisure, retail and food and drink uses typically found in buildings used for that purpose.



The Response is provided in the hope that it will enable a swift resolution to this matter. However, we would again like to reiterate our client's concerns regarding the approach being taken by the Council generally and in its interpretation of F1 use. As noted, this could have far reaching implications for the wider education sector. As such, should the Council continue to adopt a narrow interpretation of F1 use in this matter, our client reserves the right to make others within the education sector aware of this matter and bring their attention to the serious implications that this approach could have on other educational establishments operating within the Borough and further afield.

Should you have any questions or require any further clarification on the points set out in this letter, please do not hesitate to contact Michael Pocock (T: 0161 250 0223 or michael.pocock@pinsentmasons.com) or Beth Grant (T: 0161 250 8306 or E: beth.grant@pinsentmasons.com)

We look forward to hearing from you.

Yours faithfully

**Pinsent Masons LLP**

**This letter is sent electronically so is unsigned**



## APPENDIX PCN RESPONSE

1. **STATE THE PROPORTION OF THE BUILDING USED FOR TEACHING PURPOSES OVER THE LAST TEN YEARS**
- 1.1 As noted above, there are a variety of functions that fall under the umbrella of F1 educational use, beyond teaching. Our client has therefore included such uses in its interpretation of “teaching purposes” when responding to this question.
- 1.2 As is perhaps not surprising for a building of this size and nature, it is not possible to confirm the exact proportion of the building that has been used for teaching (educational) purposes over the last ten years. Our client does however confirm that teaching and other educational functions have comprised the primary use of the building during (and prior to) that ten year period. This is in line with the primary purpose and charitable objects of the UoL and its member institutions (including Bbk) which are based on the advancement of education.
- 1.3 We have enclosed with this letter the following documentary evidence to support the above statement:
  - 1.3.1 **Enclosure 1** - Floor Plans showing the layout of the building together with corresponding room numbering schedule which sets out the current and previous room numbers;
  - 1.3.2 **Enclosure 2** - Invoices evidencing hire of rooms on the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the building by UoL member institutions (including UCL, London School of Hygiene and Tropical Medicine and Bbk) for teaching and other educational purposes.
  - 1.3.3 **Enclosure 3** - UoL internal record of teaching (educational) events (2016 to 2021);
  - 1.3.4 **Enclosure 4** - Lease of part of fourth floor of the Property dated 19 December 2014 between UoL and UCL. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being as offices ancillary to education use. This demonstrates that the primary use of the Property is for educational (F1) purposes.
  - 1.3.5 **Enclosure 5** - Lease of part of fourth floor of the Property dated 17 September 2015 between UoL and UCL. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being as offices ancillary to education use. This demonstrates that the primary use of the Property is for educational (F1) purposes.
  - 1.3.6 **Enclosure 6** – Tenancy at Will of property on level 2, level 2 mezzanine and level 3 of the Property dated 13 November 2017 between UoL and UCL. With regard to this document, it is noted that the Permitted Use is defined as use for the purposes of carrying out the Works and for the provision of education within sub-paragraph (c) of Class D1 of the town and Country Planning (Use Classes) Order 1987 (Use Classes Order) excluding student union or equivalent functions. It is noted that following changes to the Use Classes



Order in England introduced in September 2020, educational use falling within the former D1 use class now falls within use class F1. It is further noted that the plans appended to this lease identify spaces used for educational purposes including a Med Physics Teaching lab, Media Labs and post grad study rooms, together with ancillary office spaces and facilities (e.g. kitchen, toilets etc).

- 1.3.7 **Enclosure 7** - Lease of part of the ground floor of the building dated 30 April 2018 between UoL and Bbk. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being for the provision of services to students ancillary to education use within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order. This again demonstrates that the primary use of the Property is for educational (F1) purposes.
- 1.3.8 **Enclosure 8** - Lease of property on level 2, level 2 mezzanine and level 3 of the Property dated 28 November 2018 between UoL and UCL. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being for the provision of education within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order.
- 1.3.9 **Enclosure 9** - Lease of property on level 2, level 2 mezzanine and level 3 of the Property dated 10 September 2019 between UoL and UCL. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being for the provision of education within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order with part being authorised for use as storage ancillary to such use.
- 1.3.10 **Enclosure 10** - Lease of part of the ground floor of the building dated 25 February 2020 between UoL and Bbk. As with the lease referred to at 1(6) above, it is noted that clause 5.9 sets out the authorised use of the demised property being for the provision of services to students ancillary to education use within sub-paragraph (c) of Class D1 (now use class F1). This again demonstrates that the primary use of the Property is for educational (F1) purposes.
- 1.3.11 **Enclosure 11** - DP9 Representation previously provided to the Council (**Representation**). The Council will be familiar with this document which was prepared by DP9 and issued to them on 30 November 2022 as part of the informal discussions into use at the Property. We do not therefore intend to summarise the document in detail in this Response, we would however draw the Council's attention to the following key points:

- (a) The property forms part of a wider estate of higher education buildings that fall within F1 use. The land on which the property is built is subject to a restrictive covenant which provides that no buildings may be erected on the land "*except University and College Buildings in connection with the University of London...and no building shall at any time be used except for the purpose of such University and College buildings*". As noted in the Representation, the existence of this covenant provides evidence that only uses that are directly connected with the UoL's purposes of furthering education have been authorised at the property and any ancillary uses must be connected to the University and its member institutions and cannot be operated independently of such purpose. This is



reflected by the use restrictions in the various leases that accompany this letter, all of which refer to educational (F1) use as the primary use of the property.

- (b) The planning history of the site includes permissions which refer to the property as falling within use class D1 (now F1). This not only demonstrates the owner's understanding and intention that the property has been used for F1 use, but also that the Council has previously accepted that position.
- (c) The appendices to the Representation include letters and representations by leading planning and real estate consultants, Gerald Eve, Avison Young and Savills as well as by solicitors, Wedlake Bell, all of whom have reached the conclusion that the existing and authorised use of the property is F1 educational use with all other uses of the property being ancillary to such use.

2. **STATE, WHAT ACTIVITIES/USES HAVE LAST OCCURRED ON EACH FLOOR OF THE PREMISES AND WHEN THESE USES STARTED AND OTHER USES THAT PRECEDED THE LATEST ONE GOING BACK TO AT LEAST 10 YEARS. PLEASE PROVIDE DOCUMENTARY EVIDENCE INCLUDING FLOOR PLANS SHOWING THE DIFFERENT USES;**

- 2.1 Please see the detailed commentary and documentary evidence provided in response to question 1 above.
- 2.2 To summarise, based on our client's knowledge of the property, they understand that the various floors of the property have been used for the following purposes during the past ten years:

**Fourth floor**

- 2.2.1 The fourth floor has been used for F1 use and ancillary purposes including teaching (educational) space and careers and housing services. It is noted that some of the rooms on this floor (including the careers service) have access control and would have required students to swipe their access cards in order to gain entry.
- 2.2.2 The stated use can be evidenced by:
  - (a) Enclosures 4 and 5, both of which make specific reference the authorised use being offices ancillary to education use;
  - (b) Signage which remains in situ at the property which identifies the housing and careers services located on the fourth floor and which the Council will have seen during their own site visit.
- 2.2.3 To the best of our client's knowledge no recent works or physical alterations have been carried out to this part of the building.

**Third floor**

- 2.2.4 The third floor has been used for educational purposes as evidenced by the invoices, receipts and bookings lists provided as Enclosures 2 and 3.



- 2.2.5 To the best of our client's knowledge, aside from minor works carried out by UCL when it took occupation of this space, no recent works or physical alterations have been carried out to this part of the property beyond minor decoration, modernisation and improvement works.

### **Second floor**

- 2.2.6 The second floor has been used for educational purposes as evidenced by the invoices, receipts and bookings lists provided as Enclosures 2 and 3.

### **Mezzanine spaces between second and third floors**

- 2.2.7 These spaces have been used for F1 use and ancillary purposes. It is noted that there is evidence that a number of the rooms on these floors had access control and would have required students and staff to swipe their access cards in order to gain entry.
- 2.2.8 The stated use of these floors can be evidenced by the leases for these floors provided as Enclosures 6, 8 and 9, all of which make express reference to F1 use
- 2.2.9 To the best of our client's knowledge, aside from the "Works" referred to in the Lease dated 13 November 2017 (Enclosure 6), no recent works or physical alterations have been carried out to this part of the property beyond minor decoration, modernisation and improvement works.

### **First floor**

- 2.2.10 The first floor consists of student bar, cafeteria, and auditorium space. These are all spaces consistently found within F1 buildings and are ancillary to the primary F1 educational use for the reasons outlined above. Further details of the nature of the use of these spaces is set out at paragraph 3 below. As noted above and evidenced by the invoices provided at Enclosure 2, the auditorium has also been used as an exam venue which is again in line with F1 use.
- 2.2.11 To the best of our client's knowledge no recent works or physical alterations have been carried out to this part of the property.

### **Ground floor**

- 2.2.12 The ground floor has housed student services including reception, shop/print shop, coffee shop, opticians and office space, further detail of which is set out in paragraph 4 below.

### **Basement**

- 2.2.13 The basement housed leisure facilities that were owned and operated by Energy Base, a departmental body of UoL. Further detail of the operation of these facilities is set out at 5 below. It is further noted that both the swimming pool and sports hall were hired to local schools for educational purposes consistent with F1 use.

## **3. STATE HOW THE BAR, CAFETERIA AND THE AUDITORIUM ON THE 1ST FLOOR WERE USED, WERE MEMBERS OF THE GENERAL PUBLIC ALLOWED TO USE**



**THESE FACILITIES, ON WHAT TERMS AND HOW MANY STUDENTS AND MEMBERS OF THE PUBLIC USED THEM. PLEASE PROVIDE DOCUMENTARY EVIDENCE AND ANY INFORMATION YOU MAY HAVE THAT MAY HELP CLARIFY THIS ISSUE.**

- 3.1 It is our client's understanding that the bar cafeteria and auditorium have been predominantly used by students throughout the lifetime of the property.
- 3.2 This is supported by the location of these facilities away from the ground floor where members of the general public would be less likely to walk in off the street and use them.
- 3.3 The "canteen" style layout of the cafeteria and its offering (which it is understood comprised mainly fast-food items such as pizzas, chips etc) would suggest that this was a facility that would have been predominantly used by student and staff members attending the building for educational purposes, much in a similar way that a school or work-style canteen would operate.
- 3.4 It is further understood that the entrance to the bar areas was usually manned by security who would request to see student ID passes on entry. Whilst it is understood that some guests were permitted entry, the primary clientele would have been students and indeed, the bar would not have continued to operate absent of the wider educational use at the building as any such use would be in contravention of the strict usage restrictions placed on the title for the property.
- 3.5 With regard to membership, we have enclosed with this letter as **Enclosure 12** a screenshot from the previous website for Student Central which sets out details of the different forms of membership that were made available. It is noted that all grades of membership were only made available to either existing students, alumni or UoL staff members. The stated benefits include "*Entry to bars and the function rooms after 6:30pm*" and access to the gym, pool and sports hall, all of which demonstrates that such facilities were predominantly offered to and used by students, instead of the wider general public.
- 3.6 It is understood that the auditorium has played host to a variety of events, including some music concerts, for which tickets may have been made available to the wider general public. Venue spaces such as this housed within F1 establishments are commonly let for commercial use to external users, however the facilities were prioritised for university use and any income received from commercial use reinvested to support the educational purposes of the University. This space was also regularly used for educational purposes including (but not limited to) being used for teaching and hosting exams, as evidenced by the invoices dated 3 March 2014 and 26 November 2015 for use of the Venue for exam purposes at Enclosure 2.
- 3.7 To the best of our client's knowledge, no physical works or alterations have been carried out to the bar, cafeteria and auditorium spaces in the recent past and these areas of the building have not been put to any alternative use.

**4. STATE HOW THE RETAIL AND STUDENT SUPPORT SERVICES ON THE GROUND FLOOR WERE USED, WERE MEMBERS OF THE GENERAL PUBLIC ALLOWED TO USE THESE FACILITIES, ON WHAT TERMS AND HOW MANY NON S. PLEASE PROVIDE DOCUMENTARY EVIDENCE AND ANY INFORMATION YOU MAY HAVE THAT MAY HELP CLARIFY THIS ISSUE.**

- 4.1 It is understood that the ground floor space has historically housed student services including a shop/print shop, opticians (University Vision), café and ancillary offices. As



noted above, such ancillary uses are commonplace in F1 buildings such as this. Whilst members of the public would not be prohibited from using these facilities, their primary purpose is and has been to service the needs of students attending the building for educational purposes.

4.2 As the Council is aware, internal works to reconfigure part of the ground floor are in the process of being carried out. Such works are internal only and do not affect the external appearance of the building. The works are ongoing and as such those areas of the ground floor are not currently in use. The fact that works are being carried out does not in itself constitute a change of use.

5. **STATE HOW THE SPORTS FACILITIES IN THE BASEMENT WERE USED, WERE MEMBERS OF THE GENERAL PUBLIC ALLOWED TO USE THESE FACILITIES, ON WHAT TERMS AND HOW MANY STUDENTS AND NON STUDENTS USED THEM. PLEASE PROVIDE ANY INFORMATION YOU MAY HAVE THAT MAY HELP CLARIFY THIS ISSUE.**

5.1 Prior to Bbk acquiring its long leasehold interest in the Property on 23 July 2021, the basement leisure facilities (comprising gym, pool and sports hall) were owned and operated by UoL under the name "Energy Base" (a UoL departmental body). All staff members were employed by UoL and the facilities were primarily intended for use by students, with such use being ancillary to the wider F1 use of the building.

5.2 The sports hall and swimming pool were both made available for hire by a local school for the purpose of carrying out PE/swimming lessons and after school clubs (a F1 education use).

5.3 Initially, membership to the basement leisure facilities was only available to students of UoL federation member institutions. Due to low student uptake, memberships were subsequently offered to members of staff of UoL federation member institutions, however numbers remained low and so a decision was taken to offer a limited number of day passes to members of the general public during the latter stages of operation.

5.4 Whilst our client does not currently have access to detailed data confirming the exact number of students/staff and/or members of the general public that accessed the leisure facilities, as owner and operator of such facilities up until their closure, they are able to confirm that their primary purpose was to serve students as an ancillary function to the building's wider F1 use. This is supported by the fact that memberships were not made available to the general public and day passes would not have been offered to the public if there had been a high student demand which would have been impacted by members of the public accessing the facilities.

5.5 Since COVID restrictions were introduced in early 2020 the leisure facilities have been put out of use. It is noted that the facilities are end of life and as such, extensive works would be required in order to bring the facilities back into use, at great financial cost.

5.6 As noted in the letter from UoL dated 29 November 2022 which is appended to the Representation at Enclosure 11, prior to closure of the leisure facilities, UoL notified other member institutions and offered them the opportunity to manage and maintain the swimming pool, however the offer was not accepted.

5.7 No physical works or alterations have been carried out to the basement leisure facilities in the recent past and this area of the building has not been put to any alternative use.





Appendix D - Note in Support of CLEUD Application prepared by Pinsent Masons LLP and dated 03 August 2023

**Birkbeck College and University of London**  
**Birkbeck Central, University of London, Malet Street, London WC1E**  
**7HY**

## Note in support of CLEUD Application

### 1. PURPOSE OF NOTE

- 1.1 This note has been prepared by Pinsent Masons LLP in support of an application for a Certificate of Lawfulness of Existing Use or Development (**CLEUD Application**) submitted by DP9 Planning Consultants on behalf of Birkbeck College (**Bbk**) and University of London (**UoL**) (together the "**Applicant**") to London Borough of Camden (**LBC**) in respect of the use of the property known as Birkbeck Central, University of London, Malet Street, London WC1E 7HY (**Property**) for educational purposes (class F1) together with ancillary uses (**Existing Use**).
- 1.2 UoL is the freehold owner of the Property and Bbk has the benefit of a long leasehold interest in the Property dated 23 July 2021. No other persons known to the Applicant have an interest in the Property.
- 1.3 This note should be read in support of the CLEUD Application and the associated supporting evidence.
- 1.4 A detailed analysis of the planning history of the Property is set out in the representation made by DP9 to LBC on 30 November 2022 (**DP9 Representation**), a copy of which is included with this application at appendix A and summarised in section 2 of this note.
- 1.5 Details of the activities carried out at the Property during the course of the ten year period leading up to the date of the PCN (being 20 February 2023) are set out in the PCN Response prepared by Pinsent Masons and addressed to LBC dated 13 March 2023, a copy of which is included with this application at appendix C and summarised in section 3 of this note.
- 1.6 The CLEUD Application is made by the Applicant in order to seek formal confirmation of the lawfulness of the Existing Use of the Property.
- 1.7 This note is intended to assist LCB by:-
- 1.7.1 Summarising the relevant planning history and activities carried out at the Property;
  - 1.7.2 Setting out the reasons why the CLEUD should be granted; and
  - 1.7.3 Providing an overview of the legal position in relation to:-
    - (a) who can make an application for a CLEUD;
    - (b) what the application for a CLEUD should contain; and
    - (c) how LBC should determine an application for a CLEUD, including what LBC needs to take into account and the tests to be satisfied by an applicant and/or LBC.

### 2. RELEVANT PLANNING HISTORY

- 2.1 As noted above, a detailed analysis of the Property's planning history is set out in the DP9 Representation at appendix A to the CLEUD Application. This confirms that the Property dates back to around 1957, with historic records indicating that its original purpose was to house the University of London's Student Union.

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**7HY**

**Note in support of CLEUD Application**

- 2.2 The planning history for the Property is limited, with only a small number of applications for planning permission having been made, none of which concern the Property's authorised use. Nevertheless, the DP9 Representation identifies the following entry on the Property's planning register in 2010 in which the Property was referred to as being in a D1 use:
- 2.2.1 Application reference 2010/0895/A for Temporary display of non-illuminated vinyl banner over the front elevation entrance to use class D1 building.
- 2.3 In addition, there are further entries on the Property's planning register which also refer to the Property as being in D1 use as follows:
- 2.3.1 Application reference 2006/0853/P for installation of new access ramp with metal handrail and glass balustrade to enable access to existing ATM, installation of 5x external domed lights at ground floor level to the front elevation of the educational institution (D1); and
- 2.3.2 Application reference 2014/6066/A for Display of 2 x non-illuminated banners to Malet Street elevation.
- 2.4 It is noted that following changes to the Use Classes Order introduced in September 2020, educational use falling within the former D1 use class now falls within use class F1, being the use class that the Applicant is seeking to have confirmed by this CLEUD Application.
- 2.5 It is acknowledged that other applications on the planning register for the Property refer to a different use class (being use class D2). Those applications are for advertisement consent and therefore, as already acknowledged in connection with the applications noted above, do not concern the authorised use of the Property. Therefore, it is not considered that the planning history for the Property alone provides conclusive evidence as to its authorised use.
- 2.6 In order to assist LBC, and to address concerns previously communicated to DP9 regarding a change from student union activities to educational use, DP9 undertook a review of student union buildings of other UoL member institutions and how these had been treated in planning terms. The review is set out in Table 3 to the DP9 Note. Whilst the exercise undertaken is necessarily not exhaustive, the results nevertheless clearly demonstrate the D1/F1 treatment of a number of student union buildings housing a range of activities, similar to those previously carried out at the Property and are therefore supportive of the Property being an F1 use.
- 2.7 The DP9 Note also makes reference to a restrictive covenant in place across the wider estate of higher education buildings, of which the Property forms part. The covenant provides that no buildings may be erected on the land *"except University and College buildings in connection with the University of London... and no building shall at any time be used except the purpose of such University and College Buildings"*.
- 2.8 It is acknowledged that the presence of a restrictive covenant is not, on its own, sufficient to prove the authorised use of a property. However, the existence of the covenant is indicative that only uses that are directly connected with UoL's purposes of furthering education would be authorised to be carried out at the Property and that any ancillary uses must be connected to UoL and its member institutions and cannot be operated independently of such purposes from an estates management perspective. This is further reflected by use restrictions in various leases relating to the Property which are appended to the PCN Response.

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- 2.9 The appendices to the DP9 Representation include letters and representations by leading planning and real estate consultants, Gerald Eve, Avison Young and Savills as well as by solicitors, Wedlake Bell, all of whom have reached the conclusion that the existing and authorised use of the Property is F1 educational use.
3. **USE OF THE PROPERTY**
- 3.1 In response to representations made by Student's Union UCL (UCL SU), LBC launched an enforcement investigation into the authorised use of the Property, culminating in the issue of a Planning Contravention Notice dated 20 February 2023 to the Applicant which raised a number of questions regarding the use of the Property (see Appendix B). On behalf of the Applicant, Pinsent Masons responded to the PCN by way of a letter dated 13 March 2023 (PCN Response) a copy of which accompanies the CLEUD application (Appendix C).
- 3.2 The PCN Response sets out details of the activities carried out across the Property, supported by documentary evidence including plans, leases, room hire records and invoices.
- 3.3 The leases relate to areas of the building located on the ground, second, third and fourth floors (including mezzanines) and are dated 2014, 2015, 2017, 2018, 2019 and 2020. It is noted that the uses permitted by each of the leases are either for the provision of education; or for ancillary purposes (e.g. offices, student services, storage etc).
- 3.4 The separate room hire records and invoices also provide evidence of use of parts of the building by educational institutions (including by UoL member institutions) for teaching and other educational purposes. The records span a variety of dates during the period from September 2013 to November 2020.
- 3.5 The PCN Response itself provides a detailed description of the activities carried out on each floor of the Property which can broadly be summarised as follows:
- 3.5.1 **Fourth floor** – used for F1 educational use including ancillary purposes, including teaching (educational) space and careers and housing services. This is supported by leases of part of the fourth floor by University College London (UCL) dated December 2014 and September 2015, both of which confirm the permitted use of the demised property as offices ancillary to educational use;
- 3.5.2 **Third floor** – used for educational purposes as evidenced by the invoices, receipts and room hire records referred to at paragraph 3.4 above;
- 3.5.3 **Second floor** – used for educational purposes as evidenced by the invoices, receipts and room hire records referred to at paragraph 3.4 above;
- 3.5.4 **Mezzanine spaces between second and third floors** – used for F1 use including ancillary purposes as evidenced by leases of parts of these floors dated November 2017, November 2018 and September 2019, all of which confirm the permitted use of the demised property being for the provision of education;
- 3.5.5 **First floor** – consisting of ancillary student bar, cafeteria and auditorium space, all of which are spaces consistently found within F1 buildings, with room hire records also demonstrating the occasional use of the auditorium as an exam venue in line with F1 use;

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- 3.5.6 **Ground floor** – housed student services including reception, retail, coffee shop and office space, which uses are again ancillary to the wider educational use of the building;
- 3.5.7 **Basement** – housed leisure facilities owned and operated by Energy Base, a departmental body of UoL as part of the wider F1 use of the Property with occasional hire by local schools for educational purposes (swimming and PE lessons);
- 3.6 Taken together, the PCN Response and supporting evidence demonstrates that the authorised use of the Property is for F1 educational use including ancillary office, leisure, retail and food and drink uses typically found in buildings used for such purpose. Class F1(a) covers “any use for the provision of education”. The activities within the Property fall within the broad scope of this definition.
- 3.7 As further context, it is noted that following receipt of the PCN Response, LBC issued a letter to UCL SU on 17 May 2023 (**Letter**) confirming its position that the primary use of the Property is “F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional classroom teaching would not be a material change of use requiring planning permission” (Appendix D). This position was also confirmed by LBC to the Applicant’s planning consultants, DP9 in a letter dated 31 June 2023 (Appendix E). The Letter confirms that LBC has based its assessment on evidence regarding the planning history of the Property, representations from UCL SU, ex-students and users of the facilities, the applicant and relevant legislation and case law. The Letter is currently the subject of an application for judicial review made by UCL SU.
4. **WHY A CLEUD SHOULD BE GRANTED**
- 4.1 Section 191(2) of the Town and County Planning Act 1990 (the “Act”) sets out the test which LBC must apply when determining whether a development is lawful. It states:-
- “For the purposes of this Act uses and operations are lawful at any time if—*
- (a) *no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) *they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”*
- 4.2 Section 191(4) of the Act sets out how LBC should determine an application for a CLEUD and states:-
- “If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.*
- 4.3 Section 171A(1)(a) of the Act provides that the carrying out of development without the required planning permission constitutes a breach of planning control. In this context, “development” can comprise either a “material change of use” or the carrying out of building, engineering, mining or other operations.

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## Note in support of CLEUD Application

- 4.4 Section 171B(3) of the Act provides that where a breach of planning control has occurred as a result of a change of use without permission or a breach of condition, the time period for taking enforcement action against such breach is 10 years, after which no action may be taken in respect of that breach.
- 4.5 The onus of proof rests with the Applicant to satisfy LBC “on the balance of probabilities” that the Existing Use is lawful. As far as the Applicant is aware, the Property was constructed for educational purposes and has been used for the Existing Use since its construction. However, in the absence of a permission authorising the construction and use of the Property, it is necessary to consider the test set out at Section 191(2) and the timescales for enforcement imposed by s171B(3) of the Act.
- 4.6 The information submitted by the Applicant in the form of the DP9 Representation, PCN Response and supporting evidence demonstrates the ongoing use of the Property for educational purposes for a period of at least ten years, meaning that the Existing Use of the Property is a lawful use for which a certificate of lawfulness should be granted. This is a position that has been agreed and accepted in the Letter issued by LBC.
5. **PROCEDURAL REQUIREMENTS**
- 5.1 The Application is made in the form specified by the Town and Country Planning (Development Management Procedure) (England) Order (2015) (**DMPO**) and is accompanied by the required supporting plans and documentation. We have attached to this note at **Schedule 1** a checklist setting out the procedural requirements for submission of a CLEUD application which demonstrates that those requirements have been met by the Applicant.
- 5.2 There are no requirements for applications to be notified to other owners or publicised. This is because the matters to be determined are solely matters of evidence and law. However, due to UCL SU’s involvement in this matter to date, it is acknowledged that LBC will want to share the CLEUD Application and provide them with opportunity to make comments. The Applicant is supportive of this approach provided it is in turn provided with the opportunity to review and respond to any representations received by LBC in connection with the CLEUD Application, in accordance with the Planning Practice Guidance<sup>1</sup>.
6. **CONCLUSION**
- 6.1 The Applicant has submitted a valid CLEUD Application as detailed in section 4 and the Schedule to this document. The application form and supporting documents (including this note) confirm that the legal requirements have been met.
- 6.2 It has clearly been demonstrated above and within the supporting documents submitted with this CLEUD Application that the Existing Use of the Property for F1 (any use for the provision of educational) is lawful.
- 6.3 The legal test for a CLEUD Application (set out in Section 191(2) of the 1990 Act) has been met and evidence and information has been provided to LBC which demonstrates on the balance of probability<sup>2</sup> that the Existing Use is lawful.

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<sup>1</sup> See Paragraph: 006 Reference ID: 17c-006-20140306 of the Government’s [Planning Practice Guidance](#)

<sup>2</sup> In accordance with the test set out in paragraph 006 of the Government’s Planning Practice Guidance – Paragraph ID and link set out above

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**Birkbeck Central, University of London, Malet Street, London WC1E**  
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## **Note in support of CLEUD Application**

6.4 Therefore, in accordance with the requirements of s191(4) of the 1990 Act, this Application should be granted and a CLEUD should be issued by LBC.

**Pinsent Masons LLP**

**3 August 2023**



Pinsent Masons

**Birkbeck College and University of London**

**Birkbeck Central, University of London, Malet Street, London WC1E 7HY**

**Note in support of CLEUD Application**

**SCHEDULE 1**

**PROCEDURAL REQUIREMENTS**





## Birkbeck College and University of London

Birkbeck Central, University of London, Malet Street, London WC1E 7HY

### Note in support of CLEUD Application

REQUIREMENT	RELEVANT LEGISLATIVE PROVISION	SATISFIED (Y/N)
<p>Application to be made by “any person” wishing to ascertain whether:</p> <p>(a) any existing use of buildings or other land is lawful;</p> <p>(b) any operations which have been carried out in, on, over or under land are lawful; or</p> <p>(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful</p>	Section 191 1990 Act	<p>Yes</p> <p>The Applicant falls within the definition of “any person”) and is making the Application for a CLEUD under section 191(1)(b) of the 1990 Act in order to formally ascertain that the “existing use of buildings or other land” (i.e. the Existing Site Activities) are lawful.</p>
<p>Application to:</p> <p>(a) be made on a form published by the Secretary of State;</p> <p>(b) specify the land and describe the use, operations or other matter in question in accordance with those sections of the form;</p> <p>(c) include the particulars specified or referred to in the form</p>	Article 39(1) of the DMPO	Yes. Please see attached form.
<p>Application to be accompanied by a plan identifying the land to which the application related drawn to an</p>	Article 39(2)(a) of the DMPO	Yes. See attached plan.

**Birkbeck College and University of London**  
**Birkbeck Central, University of London, Malet Street, London WC1E 7HY**

**Note in support of CLEUD Application**

REQUIREMENT	RELEVANT LEGISLATIVE PROVISION	SATISFIED (Y/N)
identified scale and showing the direction of north		
Application to be accompanied by such evidence verifying the information included in the application as the applicant can provide	Article 39(2)(b) of the DMPO	Yes. See information submitted in support of the CLEUD Application including in particular: <ul style="list-style-type: none"> <li>(a) The DP9 Representation; and</li> <li>(b) The PCN Response.</li> </ul>
A statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.	Article 39(2)(c) of the DMPO	Yes. Please see statement in paragraph 1.1 above.



Appendix E - Letter issued by the Council to DP9, as agent, dated 31 May 2023

Date: 31st May 2023  
Contact: Gary Bakall  
Direct Line: 020 7974 5618  
Our Ref.: EN22/0843

**Planning Services  
Compliance and Enforcement**  
London Borough of Camden  
Council Building  
5 Pancras Square  
London N1C 1TT

Marcus Stuart  
DP9  
100 Pall Mall  
LONDON  
SW1Y 5NQ

Tel 020 7278 4444  
Fax 020 7974 1975  
[Planning@camden.gov.uk](mailto:Planning@camden.gov.uk)  
[www.camden.gov.uk/planning](http://www.camden.gov.uk/planning)

Dear Mr Stuart,  
Town & Country Planning Act 1990  
**Re: Student Central, Malet Street, London W1**

The Council has carefully considered all the evidence pertaining to the possible unauthorised material change of use of Student Central (SC) from a 'sui generis' or composite/mixed use containing student union, student support services, bar, auditorium, cafeteria and sports facilities to teaching space to teaching space within the F1 Use Class. This evidence includes the planning history of the site, representations from yourself, University of London, Birkbeck College, UCL Student's Union, ex-students, users of the facilities, and relevant legislation and case law.

The matter is finely balanced and the Council can appreciate the importance that the extra-curricular activities and facilities supplied by SC for the general student experience, especially the sports facilities which are not supplied elsewhere within the University of London Campus.

The Town & Country Planning (Use Classes Order) 1987 (UCO) defines use classes and states that a material change of use will not constitute development where the new use falls within the same use class as the old. A use that is not listed within the UCO is known as a 'sui generis' use. Mixed or composite uses, where there are multiple uses taking place in the same planning unit which are not incidental or ancillary to a primary use, is also a single 'sui generis' use rather than being considered a number of different uses within different use classes

Case law (*Burdle v Sec of State* 1972) has found that in determining whether a material change of use has occurred one must first defined the extent of the planning unit. The unit of occupation should be considered the appropriate planning unit unless there is some smaller unit which are a separate use both functionally and physically. There are three general categories related to the planning unit, firstly that the that the unit of occupation has one primary use to which any other activities are incidental or ancillary, in which case it should be considered a single planning unit; secondly where the unit of occupation houses a variety of activities and it is not possible to say that one is incidental or ancillary to the other but these activities are not in physically distinct areas in which case this is a mixed/composite use; and thirdly when there are two or more physically separate and distinct areas which are occupied for substantially different and unrelated purposes, in which case each area should be considered a separate planning unit. In this case although there are a number of different activities happening within the building the Council considers the whole building one planning unit because there is only one primary entrance and the different activities are accessible from a common core. The Council considers the

pertinent question to be whether the different activities are incidental or ancillary to one primary use.

Whether a use is incidental or ancillary to a primary use is a matter of fact and degree which depends on whether the use is 'mainly connected' with the operation of the primary use. A use which is unrelated to another use within the planning unit is not ancillary or incidental to that use (Main v Sec of State 1999). Furthermore when determining what is incidental to a type of use the correct approach is not to see what is incidental to that specific use but what that use in general have as reasonably incidental activities. It appears to the Council that the uses within SC are similar to the uses found on many other University campuses and I refer to Young v Oxford City Council 2010 where it was found that the use of a university campus, considered as a whole, was for the purpose of education and that despite the fact that members of the public could use the facilities for buying books, visiting the cafes or visiting the bank did not alter the ancillary status of the use since members of the university would predominate. While the Council recognises that the University of London is not a typical university campus, SC was constructed within the 'No 1 Estate' or the 'Precinct' and part of the wider freehold title of the University of London and subject to the restrictive covenants from that transfer between the Duke of Bedford and the University of London in 1927 that states '....no building shall at any time be used except for the purpose of such University and college Buildings'.

We have been provided with the Appeal decision for 104-108 Bolsover Street (27/07/2001) to support the contention that SC should be considered a 'sui generis' use as the student union in that cases is described as 'sui generis' however there is no discussion of why the use did not fall within the then Use Class D1 (education) and as the appeal was concerned with a change of use from the Student Union to offices similar planning considerations would have applied if that building had been within D1 use. Furthermore the Council has been supplied by yourself with examples of where other student unions have been considered as D1 or F1 for the purposes of planning decisions. Likewise the planning history of SC the use has been described variously as B1 (education) and B2 (local community) on separate occasions.

The Council considers that the primary use of SC is F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would not be a material change of use requiring planning permission. While it is clear that SC was used by the public, especially the swimming pool, the Council considers that the whole building was predominately for students general educational needs including the extra-curricular activities that are recognised as an integral part of a university education and common to the majority of universities.

Yours sincerely



Gary Bakall  
**For the Director**  
**Regeneration and Planning**



Appendix F - Letter issued by the Council to DWD, as agent, dated 15 May 2023

Date: 15<sup>th</sup> May 2023  
Contact: Gary Bakall  
Direct Line: 020 7974 5618  
Our Ref.: EN22/0843

**Planning Services  
Compliance and Enforcement**  
London Borough of Camden  
Council Building  
5 Pancras Square  
London N1C 1TT

Robert Miller  
DWD  
6 Bridge Street  
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EC4V 6AB

Tel 020 7278 4444  
Fax 020 7974 1975  
[Planning@camden.gov.uk](mailto:Planning@camden.gov.uk)  
[www.camden.gov.uk/planning](http://www.camden.gov.uk/planning)

Dear Mr Miller,  
Town & Country Planning Act 1990  
**Re: Student Central, Malet Street, London W1**

The Council has carefully considered all the evidence pertaining to the possible unauthorised material change of use of Student Central (SC) from a 'sui generis' or composite/mixed use containing student union, student support services, bar, auditorium, cafeteria and sports facilities to teaching space to teaching space within the F1 Use Class. This evidence includes the planning history of the site, representations from yourself, UCL Student's Union, ex-students and users of the facilities, University of London, Birkbeck College and relevant legislation and case law.

The matter is finely balanced and the Council can appreciate the importance that the extra-curricular activities and facilities supplied by SC for the general student experience, especially the sports facilities which are not supplied elsewhere within the University of London Campus.

The Town & Country Planning (Use Classes Order) 1987 (UCO) defines use classes and states that a material change of use will not constitute development where the new use falls within the same use class as the old. A use that is not listed within the UCO is known as a 'sui generis' use. Mixed or composite uses, where there are multiple uses taking place in the same planning unit which are not incidental or ancillary to a primary use, is also a single 'sui generis' use rather than being considered a number of different uses within different use classes

Case law (*Burdle v Sec of State 1972*) has found that in determining whether a material change of use has occurred one must first defined the extent of the planning unit. The unit of occupation should be considered the appropriate planning unit unless there is some smaller unit which are a separate use both functionally and physically. There are three general categories related to the planning unit, firstly that the that the unit of occupation has one primary use to which any other activities are incidental or ancillary, in which case it should be considered a single planning unit; secondly where the unit of occupation houses a variety of activities and it is not possible to say that one is incidental or ancillary to the other but these activities are not in physically distinct areas in which case this is a mixed/composite use; and thirdly when there are two or

more physically separate and distinct areas which are occupied for substantially different and unrelated purposes, in which case each area should be considered a separate planning unit. In this case although there are a number of different activities happening within the building the Council considers the whole building one planning unit because there is only one primary entrance and the different activities are accessible from a common core. The Council considers the pertinent question to be whether the different activities are incidental or ancillary to one primary use.

Whether a use is incidental or ancillary to a primary use is a matter of fact and degree which depends on whether the use is 'mainly connected' with the operation of the primary use. A use which is unrelated to another use within the planning unit is not ancillary or incidental to that use (*Main v Sec of State* 1999). Furthermore when determining what is incidental to a type of use the correct approach is not to see what is incidental to that specific use but what that use in general have as reasonably incidental activities. It appears to the Council that the uses within SC are similar to the uses found on many other University campuses and I refer to *Young v Oxford City Council* 2010 where it was found that the use of a university campus, considered as a whole, was for the purpose of education and that despite the fact that members of the public could use the facilities for buying books, visiting the cafes or visiting the bank did not alter the ancillary status of the use since members of the university would predominate. While the Council recognises that the University of London is not a typical university campus, SC was constructed within the 'No 1 Estate' or the 'Precinct' and part of the wider freehold title of the University of London and subject to the restrictive covenants from that transfer between the Duke of Bedford and the University of London in 1927 that states '....no building shall at any time be used except for the purpose of such University and college Buildings'.

You have provided the Appeal decision for 104-108 Bolsover Street (27/07/2001) to support your contention that SC should be considered a 'sui generis' use as the student union in that cases is described as 'sui generis' however there is no discussion of why the use did not fall within the then Use Class D1 (education) and as the appeal was concerned with a change of use from the Student Union to offices similar planning considerations would have applied if that building had been within D1 use. Furthermore the Council has been supplied with examples of where other student unions have been considered as D1 or F1 for the purposes of planning decisions. Likewise the planning history of SC the use has been described variously as D1 (education) and D2 (local community) on separate occasions.

The Council considers that the primary use of SC is F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would not be a material change of use requiring planning permission. While it is clear that SC was used by the public, especially the swimming pool, the Council considers that the whole building was predominately for students general educational needs including the extra-curricular activities that are recognised as an integral part of a university education and common to the



majority of universities. While the Council is concerned and saddened by the potential loss of the facilities with SC especially the swimming pool it must be recognised that even if the Council considered SC a composite use it would be no guarantee that these facilities would be brought back into active use only that another use may not operate there without planning permission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Bakall', written in a cursive style.

Gary Bakall  
**For the Director**  
**Regeneration and Planning**