

Date: 25 September 2023
Our Ref: 16389
Your ref: 2023/3207/P

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Dear Mr. Da Costa,

SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

**RE: CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT AT STUDENT CENTRAL,
MALET STREET, LONDON, WC1E 7HY**

1. DWD are instructed to review and provide a Consultation Response (“**Response**”) on the above referenced Certificate of Lawfulness of Existing Use or Development (“**CLEUD**”) application at Student Central, Malet Street, London, WC1E 7HY (“**Property**”) on behalf of Students Union UCL.
2. The CLEUD application submitted by DP9 Ltd on behalf of Birkbeck College and the University of London (“**Applicant**”) seeks to certify that the lawful use of the Property falls under Class F1 (Learning and non-residential institutions) of Use Class (The Town and Country Planning (Use Classes) Order 1987 (as amended) (“**UCO**”), specifically under F1a “*for the provision of education*”.
3. The documents submitted in support of the CLEUD and reviewed by DWD are as follows:
 - Cover Letter (prepared by DP9 Ltd, dated 03rd August 2023)
 - Note in support of CLEUD Application (prepared by Pinsent Masons, dated 03rd August 2023)
 - Letter to DP9 Ltd setting out decision in relation to planning use of Student Central (prepared by Gary Bakall LB Camden, dated 31th May 2023)
 - Letter to DWD setting out decision in relation to planning use of Student Central (prepared by Gary Bakall LB Camden, dated 15th May 2023)
 - Planning Contravention Notice (“**PCN**”) Response and appendices (prepared by Pinsent Masons, dated 13 March 2023)
 - PCN (issued by LB Camden, dated 21 February 2023)



- Representation Covering Letter to consider the lawful land use of Student Central, Malet Street with appendices (prepared by DP9 Ltd, dated 30th November 2022)
 - Supporting Letter from University of London (dated 29 November 2022)
 - Supporting Letter from Gerald Eve (dated 24 November 2022)
 - Supporting Letter from Avison Young (dated 18 November 2022)
 - Building Survey Report (prepared by Savills, dated November 2022)
 - Supporting Letter from Wedlake Bell (dated 30 November 2022)
- 4. This Response should also be read in conjunction with the UCLU t/a Students' Union UCL v LB Camden and Others Judicial Review Core Bundle (ref: CO/2405/2023) (dated 28th June 2023) ("**Core Bundle**"), which is within the Council's possession but relevant extracts are included at **Appendix 1**. Also, of relevance, is the Defendant's Summary Grounds of Resistance submitted on behalf of the Council (ref: CO/2405/2023), which sets out the Council's rebuttal to the judicial review claim from Students' Union UCL.
- 5. The CLEUD application should be rejected. For the reasons set out below, the lawful planning use of the Property is 'Sui Generis' or 'in a class of its own'. The use of the Property for an educational use would involve a material change of use requiring planning permission.

Background

- 6. The full background to the CLEUD application is set out in the Core Bundle in the Detailed Statement of Facts and Grounds (see Core Bundle CB/21-40) and the Witness Statement of John Dubber (see Core Bundle CB/41-103) The following summary of the background suffices for the purposes of these representations.
- 7. Students' Union UCL were made aware of the Applicant's intentions to change the use of the property into a teaching facility in 2021, when a lease was agreed between the University of London and the Applicant. This change of use would result in the loss of the existing sporting, leisure and cultural uses at the Property.
- 8. Following further investigation and legal opinion regarding the loss of sporting, leisure and cultural uses at the Property, it was determined by Students' Union UCL that the lawful planning use of the Property falls under 'Sui Generis' or 'in a class of its own'. The use of the Property for an educational use would involve a material change of use requiring planning permission.

9. In January 2023, Student Union UCL were made aware that works by the Applicant had commenced at the Property, to implement a change of use, and following discussions with the Council, a meeting was requested between Students' Union UCL, DWD, the Applicant and any other relevant parties. This meeting request was denied, as the Council had requested further information from the Applicant regarding their intentions.
10. Students' Union UCL did have a meeting with the Council on the 7th February 2023, following which the Students' Union UCL issued a Planning Due Diligence Report (prepared by DWD, ref: 16389) (See **Appendix 2**), which set out research conducted by DWD in order to establish the lawful planning use of the Property. This was followed by an Additional Information Planning Note (prepared by DWD, dated 14th April 2023) (See **Appendix 3**) which set out information uses surrounding Student Central, Stakeholder feedback on the need, demand and potential loss of the Students Union facility, and Students' Union UCL's business case for the continued operation of Student Central as a students union facility.
11. The Council issued a PCN to the Applicant in order to ascertain the exact nature of the works being undertaken at the Property, and why the Applicant believed these works did not constitute a material change of use requiring planning permission.
12. Following the issuing of the PCN and the Applicant's Response (prepared by Pinsent Masons, dated 13 March 2023), the Council wrote to DWD (dated 15th May 2023) setting out their judgement on what they consider to be the planning use of the Property. The judgement concluded that the Council consider the use of the Property to be Use Class F1 (educational) with ancillary office, leisure, retail and food and drink uses typically found in educational buildings. Therefore, no breach of planning would occur if the Applicant is to change the use of the Property to incorporate a teaching facility to replace the existing sporting, leisure and cultural facilities in the Property. The Council's letter is now the subject of a claim for judicial review, submitted by Bates Wells & Braithwaite London LLP on behalf of Students' Union UCL, with the claim alleging the Council made legal errors in their assessment of the Property's lawful planning use as set out in the letter. The claim was filed in the High Court on the 21st July 2023.
13. Subsequent to the judicial review filing, Students Union UCL were made aware that the Applicant submitted this CLEUD application to the Council in order to obtain confirmation from the Council as to the use of the Property, which the Applicant believes to be Use Class F1a.

Legislative Framework

14. A full account of the legal framework is set out in the statement of facts and grounds of Students Union UCL, at paragraphs 25-37. The key provisions within the Town and Country Planning Act 1990 (as amended) (“**1990 Act**”) are the following.
15. Section 55(1) of the 1990 Act defines development as including, *“the making of any material change in the use of any buildings or other land”*.
16. Section 55(2) of the 1990 Act, however, provides that certain uses of land shall not be taken to involve development. Such uses include at s55(2)(f) of the 1990 Act:

“in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class”.
17. As set out in DWD’s Planning Due Diligence Report (See **Appendix 2**), the UCO sets out a schedule of planning use classes under Schedule 1 and Schedule 2 of the 1987 Order. Where a use falls outside of the defined limits of the schedules outlined in the UCO, they are ‘sui generis’ or ‘in a class of its own’ whereby any material change of use will require planning permission. Certain uses are specifically defined and excluded from classification by Section 6 of the 1987 order, such as, live music venues, concert halls and nightclubs.
18. Therefore, if the use of land moves between uses in the same use class within the Order, then this is not to be taken as development and planning consent is not required.
19. Part B Class F.1 ‘Learning and non-residential institutions’ of the UCO includes, *“any use not including residential use—(a) for the provision of education”*. If the Applicant is pursuing a redevelopment of the Property without submitting an application for planning permission, they must consider that a material change of use of the Property has not occurred and the Property falls within the same use class F1 in order to benefit from the exception under s55(2)(f) of the 1990 Act.

Case Law Background

20. When determining whether a material change of use has taken place, the law requires the planning authority to identify the planning unit, and then compare the use or uses taking place within the planning unit now with the use or uses previously taking place (*per Ouseley J Beach v SSETR* [2002] JPL 185 at [18]).

21. To be an ancillary use, a use must have a functional link with the primary use and be subservient (see Stocker LJ's judgment in *London Residuary Body v SSE* [1989] 3 PLR 105 at p127; and see the first instance judgment of Sullivan J in *Harrods Ltd v. Secretary of State for the Environment* [2002] JPL 437 at [87]). Further, ancillary uses are limited to what can reasonably be regarded as reasonably incidental or ancillary to a primary use of land (per Schiemann LJ in *Harrods Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] JPL 1321 at [22]).
22. The definition of a planning unit is found in the high court case of *Burdle v SSE* [1972], which sets out three issues to consider.
23. The first is, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. For example, if the primary use of the Property was as an indoor swimming pool which had ancillary/incidental office space for staff. The use of the site would be the swimming pool as the office space is ancillary/incidental.
24. The second issue to consider is:

"it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land".
25. A composite planning use is when there are two or more primary uses for a site, whereby the multiple uses are not *"confined within separate and physically distinct areas of land"*. An example of this would be a car dealership which includes elements of retail use, storage, offices, a workshop and staff facilities, operating functionally as a 'single' planning unit. In this example the entire car dealership would be considered the planning unit.
26. The third point to consider is:

"it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit".
27. This example would apply in the case of separate planning units within the same building, as established in *Church Commissioners v Secretary of State for the Environment* [1996] which confirmed

that individual shops within the larger Metro Centre in Gateshead were separate planning units. This third point would also apply to a block of flats, with each flat being classified as a separate planning unit as established in *Johnson v Secretary of State for the Environment* [1974].

28. In identifying a planning unit, it can be summarised, that the uses occurring in a planning unit will fall into one of these three categories, although as *Burdle v SSE* [1972] highlights, when considering how uses operate in a building:

“There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main use of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisably separate area that they produce a new planning unit the use of which is materially changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally”.

29. The question of whether a change in the components of a mixed-use building would constitute development under s55 of the 1990 Act, is considered in the high court appeal case of *Belmont Riding Centre v First SoS* [2003], which states that, *“in examining use classes the focus must be on the relevant use for the purposes of s.55, which in this case is the mixed use as a whole, rather than on individual components of a mixed use. A change in components will involve a change in the mixed use itself and, subject to the question of materiality, will amount to development”.*
30. A single use therefore, could grow sufficiently in scale so as to trigger a change in the components of a mixed-use site which would constitute a material change of use as highlighted in *Belmont Riding Centre v First SoS* [2003], which demonstrates that any use which could be considered ancillary, incidental or composite, to another use on a site could increase its scale, to a point a material change of use is considered to have occurred.
31. Where there is a composite or mixed use across a planning unit, the cessation of one primary use can amount to a material change of use where the remaining primary increases in scale (*Wipperman & Buckingham v Barking LBC* 1966 17 P&CR 225 at p229 *per* Widgery J, followed by the Court of Appeal in *Philglow Ltd v SSE* (1986) 51 P&CR 1; see *per* Stephenson LJ at p6).

32. In further demonstrating the importance of identifying the planning unit when considering the use, it is noted that the Council in its letter 17 May 2023 referred to the High Court judgement of *Young v Oxford City Council 2010* as evidence that the planning use of the Property is Use Class F1 and the uses found within the Property are ancillary to this primary use (See Letter to DWD prepared by Gary Bakall LB Camden, dated 15th May 2023).
33. In the case of *Young*, the permission site related to part of the larger Oxford Brookes University Gipsy Lane campus which is base to 5,600 students. The planning permission which was the subject of the High Court judgement was for complete demolition of this part of the Gipsy Lane campus and its replacement with a new library and teaching building along with extensions to existing buildings, with one such extension incorporating an element of retail which would be open to the wider public. A judicial review claim was brought against Oxford City Council and Oxford Brookes University, on the basis that the City Council did not take into account the relevant Local Plan policies relating to retail development and noise control and applied the wrong test in relation to its consideration of the retail impact of the proposed development.
34. The judgment sets out that for “large and multi-use development”, “*the predominant purpose must be considered and other uses will be permitted if they are ancillary to that predominant purpose*”. An assessment of how the Council used the *Young* judgement to evidence the use of the Property is explored in the ‘Application to Property’ section below.
35. In determining the planning use of a unit, Burdle notes that the answer to the question of what is a planning unit “*must be a question of fact and degree, to which the decision taker applied his or her mind on case by case basis*”.
36. A planning authority must have regard to a previous relevant decision and the importance of consistency. Reasons must be given where a planning authority departs from a previous decision (*North Wiltshire DC v SSE (1993) 65 P&CR. 137 at [112] per Mann LJ*). This principle is capable of applying to a local planning authority (*per Thornton J at R (Davison) v Elmbridge Borough Council [2020] 1 P. & C.R. 1 at [37]*).
37. The Council has already reached a decision on 17 May 2023 that the lawful use of the Property is educational. Since that time however the Council has been furnished with the legal submissions of Students’ Union UCL, as well as further evidential material including these representations. It would be legitimate for the Council to reject the Application notwithstanding that this would be contrary to its earlier decision if based upon the new information and analysis the Council were satisfied that this was the correct decision.

The evidence on how the Property was used

38. The Property is a 6-storey building, located at Malet Street, London, WC1E 7H. The building has, or until recently had, the following facilities:

- I. LG Floor: Swimming pool, gym, and two sports halls/studios;
- II. Gd Floor: Café, shops and opticians;
- III. 1st Floor: Bars and live music venue; and
- IV. 2nd to 4th floors: offices, and student activity and meeting rooms

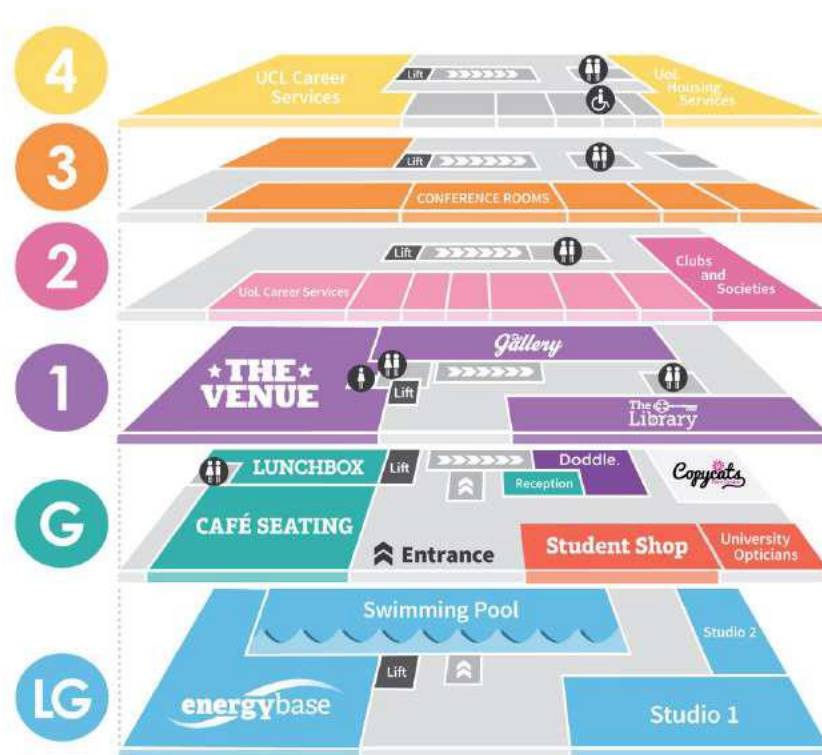


Image 1: Image from What is Student Central’ page on the Student Central website (studentcentral.london) [October 2021]

39. Image 1 above, included in DWD’s Planning Due Diligence Report, shows the layout of the Property. It was provided by Students’ Union UCL and was taken from the ‘What is Student Central’ page on the now defunct Student Central website (studentcentral.london).

40. The fourth floor of the Property contained offices relating to the UCL Careers services between 2005-22 and were not used for teaching facilities (see Core Bundle CB/200), whilst the second and third floors of the Property contained multi-use activity rooms, with offices also located on the second-floor mezzanine. The first floor of the Property contains two bars, ‘Gallery’ and ‘The Library’ along with the

grand hall multi-use space on the first floor denoted as 'The Venue' (on the above figure) which was used for live music performances and nightclub nights.

41. The ground floor of the Property which facilitates entrance to the Property from Malet Street, contains a shop selling student supplies, a café, printing shop and opticians, along with the reception area of the Property. A swimming pool, sports hall, gym and fitness classes are located in the lower ground floor of the Property.
42. As highlighted in the Witness Statement at Pg. CB/109 of the Core Bundle, members of the public, in addition to students had direct access to the building, with there being no gated entry or checks on the ground floor of the Property, which resulted in staff, alumni, the local community and students all using the café and bars, in addition to the sports facilities. The Applicant's Planning Contravention Notice (PCN) Response also acknowledges this.
43. As also set out in the Witness Statement in Core Bundle CB/108-109, from 2014, the Property was run by the University of London ("**UoL**") who were directly responsible for the operation of the offices on the second-floor mezzanine, the multi-use rooms on floors 2 and 3, the three food and drink areas in the Property (the ground floor café and first floor bars), along with the live music venue on the first floor. Importantly, it should be noted that the areas of the Property noted above, were available to be rented by not just students but also members of the public, with a number of businesses providing community services located in the Property, such as the opticians and printing shop on the Ground Floor. Core Bundle CB/333-336 provides a screenshot of the booking portal on the Student Central website, for rooms on the first – third floors of the Property, which were available for hire by members of the public. Whilst these rooms were also available for hire by member institutions of UoL it does appear that teaching and educational usage of the rooms was limited. The Witness Statement sets out in Core Bundle CB/109 that, he "*was not aware of any regular teaching taking place in the building. The available rooms did not appear to be suitable for use as teaching spaces, as they were set up for sports or social community activity use*".
44. It should also be noted that the Applicant, in their PCN Response and appendices (prepared by Pinsent Masons, dated 13 March 2023), refer to a number of invoices evidencing hire of rooms on the 2nd and 3rd floors of the Property by UoL member institutions, for what they describe as "teaching and other educational purposes". Copies of these invoices have not been included as part of the Applicant's CLEUD application, however Students' Union UCL have seen a copy of these invoices as part of the Council's Judicial Review Submission Bundle (ref: CO/2405/2023) to the Courts in respect of the judicial review claim from Students' Union UCL. It is considered that the invoices in question, are not

persuasive in demonstrating that the building has predominantly been used for educational purposes, as the invoice data on the whole shows only a small number of rooms were booked for a limited period of time.

45. The leisure facilities in the lower ground floor of the Property, which whilst owned and (from 2013) operated by UoL, were also used by members of the public, in addition to students. Data on the membership levels of the Student Central, obtained via a freedom of information request, indicate that during 2018-2019 the last period of data collection prior to the COVID-19 pandemic, of 15,500 total members, 3,400 were members of public (see Core Bundle CB/329). This figure fluctuated between 3,000-6,000 members of the public, in line with total membership levels of 15,000-19,000 total members between the record periods of 2014-15 to 2017-2018.
46. As evidenced by Core Bundle CB/344 of the membership for 'Energybase', the leisure facilities at the Property, were available to members of the public and included access to the gym and swimming pool along with access to fitness classes. As stated in the Witness Statement in Core Bundle CB/109, the witness "*saw use of the facilities fluctuate over time, through renovations and changes in student social trends, but the building always appeared to be busy and always served as a hub for the community (pg. CB/105-106)*".
47. An important part of the leisure offering on the lower ground floor is the swimming pool, which given its unique specifications in Central London, has been regularly used by a number of public organisations such as Out to Swim and British Naturism, along with staff and students of all the universities located in the immediate area, in addition to members of the local community. The depth and length of the swimming pool make it unique for its Central London location, and allows for a range of activities to take place in addition to swimming, such as diving, lifesaving, lifeguard training, underwater hockey, water and canoe polo.
48. Concerts open to the wider general public, have historically been held in the first-floor auditorium dating back to the 1960s, as noted by Tom Kiehl of UK Music (see Core Bundle CB/206), and the representations from the Music Managers Forum and the Music Venue Trust (see Core Bundle CB/204-205), with bands such as Kaiser Chiefs, Joy Division, Sonic Youth, Rage Against the Machine, MUSE, The Creatures, Bauhaus, Jesus and Mary Chain, Teenage Fan Club, Pavement, The Clash, The Sex Pistols, Joy Division, Led Zeppelin, The Smiths, Scritti Pollitti, My Bloody Valentine, Coldplay and Blur playing at the Property (see Core Bundle CB/206). Purchase of tickets and other events were accessible to members of the public as well as students, through publicly accessible ticket platforms such as Ticketmaster (see Core Bundle CB/109).

Applicant's Evidence on Property Use

49. The Applicant's CLEUD application has also provided evidence as to how the Property has been used historically, as part of their case to demonstrate the use of Property as falling within Use Class F1a.
50. The Applicant has provided a Supporting Letter from Avison Young (dated 18 November 2022), which refers to an earlier report and site inspection under taken on 2nd December 2020. Notwithstanding the fact the full December 2020 report is not provided as part of the supporting letter, the report extracts provided lack context, and there is a failure to acknowledge the fact that the visit was undertaken during the COVID-19 pandemic when the majority of the sporting, leisure and cultural facilities were no longer open. The extract from the December 2020 report also acknowledges that the third floor of the Property contains a "Sports hall/lecture", which whilst configured as a socially distanced lecture hall in the accompanying image, also implies it is used as a sports / multi-purpose facility also.
51. Similarly, the Applicant has also provided a Building Survey Report (prepared by Savills, dated November 2022) in support of their CLEUD application. Similar to the supporting letter from Avison Young the building inspection visit was undertaken during the COVID-19 pandemic when the majority of the sporting, leisure and cultural facilities were not in use, which the Building Survey Report acknowledges. The Building Survey Report in describing the Property use states, "*The majority of the Site is contained within the upper floors. These upper floors looked to provide educational / teaching spaces to UoL students*". It should be noted that this is in the opinion of the surveyor at the time of the visit, and therefore is not instructive in determining the lawful planning use of the Property, particularly given the normal operation of the students union and recently ceased with the advent of the COVID-19 pandemic.

Identifying the Planning Unit and the Planning Use

52. It is common ground that the Property as a whole, falls to be considered as a single planning unit, separated from the remainder of the University of London campus, though differing justifications are provided for this conclusion.
53. The Council identifies the Property as one planning unit as set out in their Letter to DWD (dated 15th May 2023), in which they state:
- "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 (para 4)".*
54. Similarly, the Applicant also acknowledges the Property as the planning unit as highlighted in the Representation Covering Letter which states:

“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 (pg. 2)”

55. The correct analysis is that the building contains a mix of uses which are functionally and physically interlinked, which, whilst operating at different intensities, are functioning as a single planning unit providing services to a wider student body.
56. The Lower Ground Floor, containing the swimming pool, gym and sports halls, had a leisure use. These areas were not used for teaching or instruction and therefore their use could not therefore be educational. Notably Birkbeck and the UOL acknowledged that these facilities were not in an educational use, but suggested the facilities are ancillary to the educational use taking place elsewhere in the building: see the Pinsents Mason PCN response (dated 13th March 2023, paras. 2.2.10 and 5.1) submitted in support of the Applicant’s CLEUD application. That argument is considered below.
57. The Ground Floor and First Floors of the Property were used for leisure and retail which again could not be classified as being for the ‘provision of education’. Again, this is acknowledged in the Pinsent Masons PCN Response (see paras. 3.5.5-3.5.6).
58. The fourth floor was used by UCL Student Services, as offices for their staff and to meet with students wishing to speak with careers advisors. This again does not involve the provision of education. Pinsent Masons in their note 3 August 2023 acknowledge that this use across the fourth floor was at least in part ancillary, describing the use of the fourth floor as follows at para 3.5.1 **“Fourth floor – used for F1 educational use including ancillary purposes, including teaching (educational) space and careers and housing services.”**
59. Pinsent Masons only assert that a primary educational use took place across the second and third floors of the Property (paras 3.5.2-3.5.3), as well as possibly the fourth floor (3.5.1. The second to third floors had rooms available for external hire by constituent universities, student clubs and by members of the public with no association to any of the educational institutions within the University of London. Only use of these rooms by constituent universities for teaching involves the provision of education.
60. A large percentage of the Property therefore contains sporting, leisure and cultural facilities along with retail, which as well as being accessible by students is also open to the general public. The scale and intensity of these uses prior to the COVID-19 pandemic, would not suggest uses that are subservient to a larger ‘provision of education’ but rather differing primary uses which together form

a composite planning use, with the student services on floors on the second to fourth floors of the Property.

61. Further, there would appear to be no functional link between any of the leisure and retail facilities taking place on the lower ground, ground and first floors, and any educational use taking place on the other floors. Where examinations took place for example in a room hired for that purpose in the upper floors, there was no relationship between that use and the use of the leisure and retail facilities. These facilities are not akin for example to an office within a retail store that functions in connection with the retail area. Those facilities were independent and would have remained operating, and used by members of the public, as well as students not visiting the Property for any educational purpose.
62. Also, ancillary uses are limited to what can reasonably be regarded as reasonably incidental or ancillary to a primary use of land. Leisure and retail facilities of these type and scale and which are accessible to the public are not generally present across educational institutions.
63. Under Birkbeck's occupation, the plan is to increase the use of the Property for teaching across the Property, whilst ceasing all leisure and retail activities. As set out in the above section of this Response, the Enclosures provided in Pinsent Masons PCN response (and noted in the Council's 'Summary Grounds of Resistance'), demonstrate that bookings to provide teaching facilities covered a portion of the multi-purpose rooms on the second to fourth floors of the Property, for a limited number of days throughout the year. Therefore conversion of the Property to permanent teaching facilities, as a matter of fact and degree, this involves a material change in the use of the building that requires planning permission.

Appeal Precedent

64. The above analysis is consistent with an appeal precedent into the planning use of a students' union building, of a directly comparable students' union building, of similar context to the Property: 104-108 Bolsover Street, London (LPA ref: PT/00/02169/FULL). This decision involved an appeal being dismissed on 27th July 2001 for "*Retention of residential use on 5th floor, reversion of balance of building to commercial use class B1*" ("**2001 Appeal Decision**") (See **Appendix 4**).
65. With regard to the lawful planning use of the students' union building the Inspector confirmed, "*The use of the building as a Students' Union was a sui generis use and although parts of the building were used as offices, for example for the provision of welfare services and the production of a student magazine, I consider that these were reasonable ancillary uses associated with a Students Union building and did not in any sense establish a class B1 office use*".

66. Direct parallels can be drawn between this case and the Property, in that, administrative/educational facilities that are ancillary to or form part of a composite use in a students' union, does not establish the administrative/educational facilities as being a separate planning unit, independent of the students' union. This is due to their being a physical and functional link between the mix of uses in the building, which form a single planning unit, which as the Inspector highlights would be classified as 'sui generis'.

Response to the Council's analysis

67. In the case of the *Young* judgment, where the Council has drawn parallels to the Property is the presence of a students union within the proposed teaching building on the Gypsy Lane Campus, along with a students service area, a large lecture theatre, a food hall and a café. However, in the case of *Young*, the high court is clear in considering the relevant planning unit to be the Gypsy Lane campus development as a whole. As the judgement states, "*In the case of the Gypsy Lane campus development, its purpose is not difficult to ascertain. The development, from the earliest consideration of the details of the 2005 Local Plan, has been considered and planned as an education use, being Class D1(c) in the Use Class Order scheme of categorisation (para 23)*". The Property however differs to the context presented in the case of *Young*, as it is acknowledged by both the Council and the Applicant that the Property itself is the relevant planning unit, rather than a wider university campus, such as Gypsy Lane. In this respect, it is considered therefore that the purpose of an individual students union and the uses contained within, may differ than if it is located on a larger university campus where the campus itself would be considered the planning unit. The 2001 Appeal Decision support this, in that 104-108 Bolsover Street, which shares similar characteristics to the Property, is not on a large university campus, is accessible from the public highway and has a mix of uses in its vicinity.
68. It is therefore considered incorrect for the Council to draw direct conclusions from the judgement of *Young*, considering the differing site contexts.

Response to the Applicant's analysis

Property Planning History

69. Firstly, it is noted that the Applicant in seeking to establish the existing use of the Property as being Use Class F1a, reference to an application submitted under reference 2010/0895/A for the "*Temporary display of non-illuminated vinyl banner over the front elevation entrance to use Class D1 building*", which was approved on 1st April 2010. It is stated in the Applicant's Representation Covering Letter that Use Class D1 (now Use Class F1), "*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 (pg. 4)''.

70. To the contrary it is considered that, the planning history of the Property, provided little indication as to the Council's view on the planning use of the Property. Application ref: 2014/4556/A, granted on 1st August 2014 for *"Display of two vinyl banners to the main entrance on Malet Street and one vinyl banner over the side entrance on Bying Place as temporary advertisements detailing the date and time of the University of London Union Freshers' Fayre event at Student Union Building (Class D2) for a temporary period between 15/09/2014 and 06/10/2014"*, listed the use of the student's union building as D2, as did a prior application at the Property under reference 2013/4254/A.
71. The now revoked Use Class D2 'Assembly and leisure' contained a number of uses such as swimming baths and indoor sports and recreation, which can be found in Use Class F, as well as some uses such as music and concert halls which have now been defined as 'sui generis'. Use Class D2 was however distinct from the now revoked Use Class D1c (Now Use Class F1a), which is claimed to be the lawful use of the Property.
72. Use of the Council's accepted development descriptions when reviewing the planning history of the Property, is therefore not compelling evidence to establish the use of the Property as Use Class F1a, as there are more instances of the Council referring to the Property being in Use Class D2 which would be between Use Class F and Sui Generis.
73. The Representation Covering Letter (prepared by DP9 Ltd, dated 30th November 2022) submitted in support of the Applicant's CLEUD application, also provides an analysis of UoL member institutions and what the Applicant considers to be their Student Unions, in order to analyse and draw parallels between how the lawful planning use is described in any relevant planning applications.
74. Firstly, of the member institutions listed by the Applicant it is acknowledged that London School of Hygiene & Tropical Medicine, The Institute of Cancer Research, London, The Royal Central School of Speech and Drama, The Royal Veterinary College, School of Advanced Study and University of London Institute in Paris do not have physical students union buildings. The Representation Covering Letter also states that Queen Mary University, London does not appear to have any relevant planning history to indicate a description of the Queen Mary Students union. In the case of City, University London, Courtland Institute of Art, Goldsmiths, both Kings College London sites, Royal Academy of Music, Royal Holloway, SOAS, St. George's, University College London and University of London Institute of Education the parallels drawn with the Property are not compelling as the students' union facilities described in the applications presented, form part of larger university buildings and/or wider campus

planning units, which contain predominantly teaching facilities with the students' union being ancillary to this primary use. This distinguishes these examples from the Property which is a standalone planning unit.

75. Of the listed students union buildings which are considered comparable to the Property, as stated the Queen Mary University, University of London does not appear to have any relevant planning history to indicate a description of the Queen Mary Students union on the LB Tower Hamlets online planning portal. With regards the London School of Economics and Political Science and the application (ref: 10/01617/FULL) for their students' union building at Sheffield Street. Whilst the description of development specifies an erection of a higher educational building as Use Class D1, the use of the site does not appear to be the subject of the decision rather the operational development involved in the *"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"*. It should be noted that the land use class of this application is not the subject of dispute in this application, and the students' union building is located within a cluster of LSE buildings which the Officer's Report for application 10/01617/FULL describes as *"within the main LSE campus"*. The LSE students union building on Sheffield Street therefore more closely mirrors the characteristics of the students union buildings of member institutions such as both Kings College London sites, Royal Academy of Music, Royal Holloway and SOAS, than the Property.
76. As with the Council's analysis in the judgement of Young, it is therefore considered incorrect for the Applicant to draw direct conclusions from the planning history of the UoL member institutions, due to there being in the majority of cases a differing site context, to that of the Property.

Restrictive Covenant and Function of the Property

77. The Applicant's CLEUD submission sets out the view that the composition of planning uses can be classed as falling within Class F.1 of the UCO, in particular, sub-class F1a, as the uses are, *"for the provision of education"*.
78. In this respect, the Representation Covering Letter attempts to establish a functional link between the Property and the provision of education through the University of London, given the Property is part of the same freehold of a number of university buildings denoted as the No 1 Estate (or 'Precinct'). As the restrictive covenants tied to the transfer of this freehold to the University London, contain restrictions on the non-residential uses, with no building to be erected on the land except *"University and College Buildings in connection with the University of London"*, it is considered that use of the

Property cannot be operated independently of the University and must therefore be for the 'provision of education'.

79. The 1927 legal restrictive covenant is an irrelevant consideration. Whilst the freehold title may be historic evidence of the original intentions for the wider University of London holding in this part of Central London, it provides no evidence of the actual usage of the Property to establish whether the composition of uses in the Property can be categorised as falling within Use Class F1a the 'provision of education'. Over two decades elapsed after the covenant was drafted before the Property was even constructed. Almost a century had passed by the date the use of the Property arguably changed.

Conclusion

80. The lawful use of the Property is 'Sui Generis' and planning permission is required for the proposal to materially increase the amount of education taking place in the Property, with all leisure, cultural and retail uses ceasing. As set out in the Planning Due Diligence Report at Appendix 2, the loss of the leisure and cultural facilities would conflict with the Council's adopted Local Plan policies.
81. I trust the above comments are clear and I would be grateful for acknowledgement of receipt of this letter. If you have any further questions or comments, please contact Barry Murphy or Rob Miller at this office.

Yours sincerely,



Barry Murphy

Partner

DWD

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Enc. Appendix 1 – Extract from the UCLU t/a Students' Union UCL v LB Camden and Others Judicial Review Core Bundle (ref: CO/2405/2023) (dated 28th June 2023)

Appendix 2 - Planning Due Diligence Report (prepared by DWD, ref: 16389)

Appendix 3 - Additional Information Planning Note (prepared by DWD, dated 14th April 2023)

Appendix 4 – Appeal Decision for Application Ref: PT/00/02169/FULL)