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Student Central, Malet Street Planning Due Diligence Report

By: RM/BM
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1. DWD are instructed by Students Union UCL to prepare a Planning Due Diligence Report ("**Report**") for Student Central, Malet Street, London, WC1E 7H ("**Site / Property**") to establish the existing lawful planning use of the Site. The Property has recently been acquired by Birkbeck, University of London and it is understood their intention is to redevelop the Property, changing its existing use as a 'students union' and pursuing a change of use to solely educational facility with teaching classrooms (Use Class F1). This change of use would likely involve the loss of the existing sporting facilities in the 'students union', which include a swimming pool and gym. Whilst Birkbeck have not made their intentions public, it is understood they consider that their aspirations for the Site can be achieved without a material change of use occurring and planning consent being sought. It is the aim of Students Union UCL to preserve the sporting, leisure and cultural facilities on Site, in particular the indoor swimming pool, due to a need for this facility and a lack of alternatives for students and the local community in this Central London area.
2. The purpose of this Report therefore is to establish what Use Class the existing students' union is categorised under in the Town and Country Planning (Use Classes) Order 1987 (as amended) ("**1987 Order**"). This will determine whether Birkbeck would be required to submit an application for planning permission to change the use of the Property. If Birkbeck are required to submit a planning application for change of use, then they would be required to adhere to relevant planning policy and any other material considerations.
3. DWD have based this report on desk-based assessment, and review of information sent from Students Union UCL which pertains to the use of the Site, and Students Union UCL attempts to lobby against the loss of the existing sporting, leisure and cultural facilities at the Property. DWD has been unable to undertake a site visit.
4. This Report will describe the Site and surrounding context, and confirm the relevant legislative background, appeal and case law precedent, relevant planning history and information received from

Students Union UCL. This Report then sets out relevant adopted planning policy for the Site, and policy considerations for a future change of use application.

Site

5. The Site relates to the former University College London Students Union Building, which is located on the corner of Malet Street and Byng Place. The 6-storey building was occupied in the 1950s by the now defunct University of London (“UoL”) Union and was used as a students’ union building, up until its closure in March 2020. The Property accommodated a wider range of uses including a swimming pool, gym, bar, performance space as well as offices used by the students’ union to provide amongst other things, career advice, in addition to conferences and a classroom.
6. When operational the uses within the Property, consisted of:
 - Lower ground floor - Swimming Pool and Gym
 - Ground floor – Café, shops and opticians
 - First floor – Bar, Performance Space and Library
 - Second Floor to Fourth Floors - Student Union Offices, classrooms and conference rooms used in connection with the provision of student services



Figure 1: Aerial view of the Site

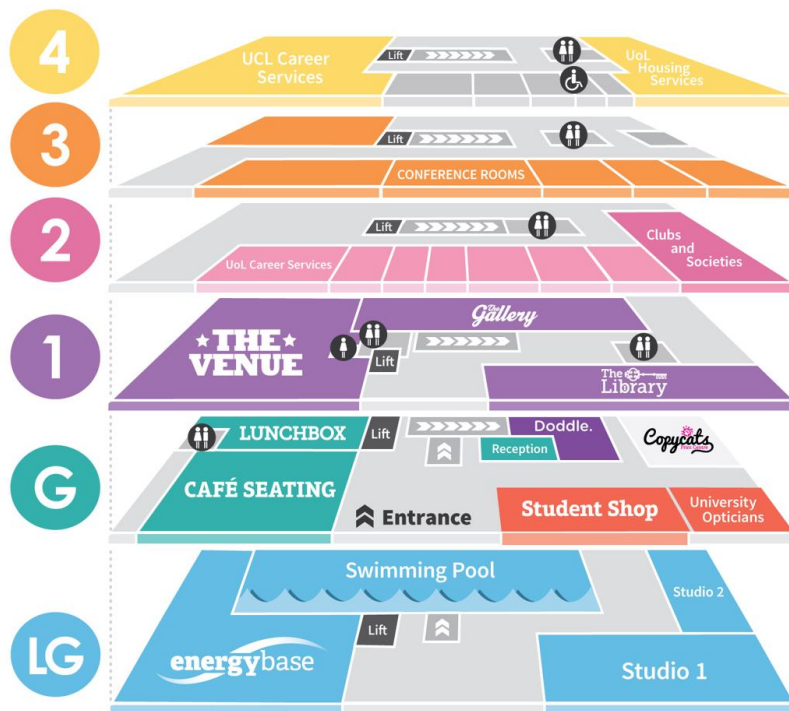


Figure 2: Floor level layout of the Property

7. The Site is located within the administrative boundaries of the London Borough of Camden (“Council”) and is at the heart of a number of universities which reside in the vicinity of the Site, which include Birkbeck, University College London (UCL) and School of Oriental and African Studies (SOAS), amongst others. Whilst the Property is not listed, it is also located in the Bloomsbury Conservation Area and is listed in the Bloomsbury Conservation Area Appraisal and Management Strategy (2011) as being a ‘positive contributor’ to Sub Area 2: ‘Gordon Square/Woburn Square/Byng Place’.

Legislative Background

8. The Town and Country Planning (Use Classes) Order 1987 (as amended) (“1987 Order”) sets out a schedule of planning use classes under Schedule 1 and Schedule 2 of the 1987 Order.
9. Where a use falls outside of the defined limits of the schedules outlined in the 1987 Order, they become ‘sui generis’ or ‘in a class of its own’ where any 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.
10. Section 55(1) of the Town and Country Planning Act 1990 (as amended) (“1990 Act”) defines development as including, “the making of any material change in the use of any buildings or other land”. 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”.

11. 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.
12. Part B Class F.1 ‘Learning and non-residential institutions’ of the 1987 Order includes, *“any use not including residential use—(a) for the provision of education”*. If Birkbeck is pursuing a redevelopment of the Site without submitting an application for planning permission, they must consider that a material change of use of the Site, has not occurred and the Site falls within the same use class F1 in order to benefit from the exception under s55(2)(f) of the 1990 Act.

Appeal and Case Law Precedent

Case Law Background

13. In determining the existing lawful planning use of the Students Union, the starting point is to first consider the concept of the planning unit. 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.
14. 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.
15. 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”.
16. 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.

17. 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”.

18. 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]*.

19. 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”.

20. 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”.*

21. 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.

22. 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 base by case basis*”.
23. In the case of the Site, with the building containing 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, it is considered that the Property fits the characteristics of having a composite planning use.
24. If one of the composite uses in the Property were to significantly increase in scale this could lead to a change in the composition of uses, which if considered material, would require submission of a planning application. The case law precedent therefore highlights that it is too simplistic to state that a change of use occurs when a use is added or removed from a site, rather how a sites operation can be just as important.

Appeal Precedent

25. In researching appeal precedent into the planning use of a students’ union building, the closest example of a students’ union building, of similar context to the Site, is the case of 104-108 Bolsver Street, London (LPA ref: PT/00/02169/FULL), which 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**”).
26. In commenting directly on the planning use of the students’ union building the Inspector states, “*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*”.
27. Direct parallels can be drawn between this case and the Site, 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’.

Application to the Site

28. It can be summarised from the case law background on planning and limited appeal precedent on students’ union buildings, that the question of what planning use the Site is classified as, can be refined into identification of the planning unit, and how different uses at the Site interact.

29. As stated, the Site would appear to share the characteristics of a composite planning use, with the building containing a mix of uses which are functionally and physically interlinked, which operate at different intensities, but are operating as a single planning unit, providing services predominantly to the wider student body.
30. Case law precedent in the case of *Burdle and Belmont Riding Centre v First SoS 2003*, outline that a change in scale or composition of planning uses which are composite, could be considered a material change of use, which would require planning permission. This is of particular relevance if Birkbeck aim to use the majority of the building for teaching/administrative purposes, whilst retaining a small element of sporting/leisure to avoid having to submit a planning application, by claiming that no material change of use has occurred.
31. The 2001 Appeal Decision, provides precedent for classifying a students' union as a 'sui generis' use class, whilst also highlighting that administrative/educational facilities that form part of a composite planning use in a students' union, does not establish the administrative/educational facilities as a separate planning unit, independent of the students' union.

Relevant Planning History

32. The relevant planning history of the Site has been tabulated below in Table 1.

Table 1: Relevant Planning history for the Site

Reference	Site	Description	Status
2015/4058/A	<i>The Site</i>	Display of 3 x banners (2 over Malet Street entrance, 1 over Torrington Square entrance)	Granted. 21/08/2015
2014/4556/A		Display of two vinyl banners to the main entrance on Malet Street and one vinyl banner over the side entrance on Byng 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	Granted. 01/08/2014
2013/4254/A		Erection of 2 vinyl banners and 1 Flag for temporary advertisement detailing the date and time of the University of London Union Freshers' Fayre event at Student Union Building (Class D2)	Granted. 22/08/2013
2012/3097/A		Display of two banners hung to front and side elevation and placement of one feather flag display at side elevation for a temporary period from 18/9/12 to 8/10/12	Granted 19/07/2012
2011/3173/A		Temporary display of non-illuminated vinyl banner over front elevation entrance and one quill/feather flag display to stand outside north entrance at Byng Place for the period 12/09/2011 - 30/09/2011.	Granted 20/07/2011

2010/0895/A		Temporary display of non-illuminated vinyl banner over the front elevation entrance to use Class D1 building.	Granted 26/03/2010
2009/4353/A		Temporary display of a vinyl banner above the main entrance on Malet Street and one quill/feather flag display to stand outside the North entrance for the period 13/09/2010 - 01/10/2010,	Granted 28/10/2009

33. As demonstrated by Table 1, the planning history of the Site, provides little indication as to the Council's view on the planning use of the Property, but it does indicate that they view the Property as a single planning unit, as the decision-maker. The application of important is 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"* ("**2014 Decision**").
34. The Council in the 2014 Decision categorises the students' union building under the now revoked Use Class D2 'Assembly and leisure'. Use Class D2 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'. In any event it would appear in the case of the 2014 Decision that the Council viewed the students' union building to be operating as a 'single planning unit', which would match the characteristics of a composite planning use taking place at the Site.

Information Received from Students Union UCL

35. As part of the due diligence on the Site, DWD has been sent information pertaining to the existing uses at the Site, and the attempts of Students Union UCL to explore avenues to preserve the sporting, leisure and cultural facilities at the Property. The information includes:
- Lobbying correspondence sent to Birkbeck, the University of London and Jacob Rees Mogg MP;
 - Legal advice from Horatio Waller (Francis Taylor Building) to Students Union Central;
 - Correspondence from Edward Leahy (Bartlett School of Planning) to Students Union UCL;
 - Documents relating to a number of Freedom of Information ("**FOI**") requests sent to Birkbeck and the University of London between July and August 2021; and
 - Site photos showing the internal configuration of the Property

Lobbying Correspondence

36. A series of correspondence lobbying Birkbeck, the University of London and Jacob Rees Mogg MP, were also provided to DWD for review.
37. Of the most notable correspondence reviewed, a reply from Professor Wendy Thomson (UoL) dated 30/06/2021, states that UoL are confident Birkbeck's use of the building will benefit the lives of thousands of students and there are other facilities (gym and pool) nearby which students can use.
38. This statement is of particular importance as it appears to indicate that there are a number of gym and pool facilities near the Site, which would provide justification for the removal of the existing facilities in the Property. This response contradicts the letter sent to UoL from Student Union UCL which states that the swimming pool in particular, is the largest in Central London with few alternatives nearby, and that any that do exist, would not have the capacity to absorb the demand for the loss of the facility at the Site.
39. The correspondence to Jacob Rees Mogg MP dated 20/07/2021 suggests that 100,000 students in multiple campuses near the Site, would be left without access to the pool in the event it is removed. The correspondence also highlights that the nearest suitable facility which caters to a full range of pool-based activities is 45 minutes away, which would leave students without a reasonable alternative. Arguments around the impacts of the loss of the swimming facility, are of particular importance when determining policy considerations for any change of use at the Site, as explored in the 'Policy Considerations' section below.

Legal Advice

40. A copy of legal advice received from Horatio Waller (Francis Taylor Building) has also been sent to DWD for review. With regards to the planning matters contained within the legal advice, the basis of the advice is shared by the conclusions this Report will explore.
41. In summary whether the Property is considered to operate as one planning unit with functional and physically linkage, or whether Birkbeck would argue that the administrative/teaching facilities are separate planning units to the sporting/leisure facilities, the redevelopment of the Property and loss of sporting/leisure facilities would constitute a material change of use under s55 of the 1990 Act, and planning consent would be required.

Correspondence with Bartlett School of Planning

42. The tranche of information received by DWD, includes correspondence between Edward Leahy (Bartlett School of Planning) and Students Union UCL regarding preparation work on a local listing application to the Council.

43. The correspondence includes notes on the heritage values of the building along with its architectural significance. The heritage value of the Property is derived from the facilities place as a cultural hub since its opening in the 1950s, with the Property hosting bands such as The Clash, The Sex Pistols and Joy Division in the performance space. The architectural significance of the Property is said to derive from the design of the swimming pool, which has underwater viewing windows and features two long 'clerestory' windows running the length of the pool.
44. The notes include a quote from an architect involved in the design of the Property, which highlights the functional link between the mix of uses in the property, with the significance of the Property said as being *"the multi-purpose use of the various parts forming the building which is a feature in the planning arrangements on a restricted site"*.
45. The research as set out in the correspondence from Edward Leahy, provides a significant amount of evidence as to the cultural significance of the Property, which Birkbeck would be required to address in justifying the loss of the sporting/leisure facilities in the event an application is submitted to the Council.

Site Photos

46. The site photos reviewed in the preparation of this Report, show a number of the sporting, leisure, administrative and educational uses which were operational inside the building. Users of the facilities appear able to freely traverse between the floors as required, using the same core to access the different sporting, leisure, cultural and other facilities. The floorplan map (see Figure 2) of the facility similarly indicates that there is one primary entrance to the building with all floors accessible from the same access core.
47. Access to the facilities from the same core is not definitive evidence the building has no physical separation between uses, particularly as the administrative/education facilities are distinct in their placement on the top three floors of the Property. However, it is clear from the evidence submitted that the mix of uses in the Property are all catered towards the student body, and appear to be operating as a single planning unit in sharing a wider function, which is to provide a range of sporting, cultural, leisure, administrative and education facilities predominantly for students.

FOIs

48. Whilst it is not intended to repeat all the details from the FOI responses reviewed by DWD, of note was the response to questions with regards to the usage of the Site. As summarised in the evidence reviewed, there was no significant drop-off in use of the Student Central building as of academic year 2018/19, which was the last year figures were available due to the pandemic and the buildings subsequent closure in March 2020.

49. Total membership of Student Central in 2018/19 was 15,500 which whilst lower than the two previous academic years was an increase on 2014/15 and 2015/16 levels. The total membership included 12,100 students and staff members. The total membership of the indoor swimming pool and gym in 2018/19 stood at 3,000 people which is the same number of people who were accessing the facility on a daily basis, which has remained consistent for the previous 5 years of monitoring.

Conclusion

50. In summary, based on the information received from Students Union UCL, in combination with the existing case law and appeal precedent, it is considered that the existing lawful use of the Property is as a composite 'sui generis' planning use meaning that any change to the composition (mix) of uses would constitute a material change of use, which would require an application for planning permission to be submitted to the Council.

Planning Policy

51. In accordance with Section 38(6) of the Planning & Compulsory Purchase Act (2004), applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. Under Section 38(2), the development plan for any area within Greater London comprises the Spatial Development Strategy and the development plan documents (taken as a whole) which have been adopted and approved in relation to that area. The statutory development plan for the Site comprises of the following:

- London Plan (March 2021) ("**London Plan**"); and
- Camden Local Plan ("**Local Plan**") (2017)

52. In addition to the statutory development plan documents, the following documents are relevant material considerations that any development of Site must have regard to:

- Camden Planning Guidance: Community uses, leisure facilities and pubs (January 2021) ("**CPG**")
- Bloomsbury Conservation Area Appraisal and Management Strategy (2011)

53. Many of the uses which can be found in the Students Union are covered under the definition of 'social infrastructure', which is set out in the London Plan. London Plan Paragraph 5.1.1 states social infrastructure includes, "*health provision, education, community, play, youth, early years, recreation, sports, faith, criminal justice and emergency facilities*". London Plan Policy S 1(F) 'Developing London's social infrastructure' in dealing with the loss of London's social infrastructure states:

“Development proposals that would result in a loss of social infrastructure in an area of defined need as identified in the borough’s social infrastructure needs assessment required under Part A should only be permitted where:

1) there are realistic proposals for re-provision that continue to serve the needs of the neighbourhood and wider community, or;

2) the loss is part of a wider public service transformation plan which requires investment in modern, fit for purpose infrastructure and facilities to meet future population needs or to sustain and improve services”.

54. London Plan Policy S 5 ‘Sports and recreation facilities’ focuses specifically on sports and recreation facilities in London, and dealing with their loss requires that:

“Existing sports and recreational land (including playing fields) and facilities for sports and recreation should be retained unless:

1) an assessment has been undertaken which clearly shows the sports and recreational land or facilities to be surplus to requirements (for the existing or alternative sports and recreational provision) at the local and sub-regional level. Where published, a borough’s assessment of need for sports and recreation facilities should inform this assessment; or

2) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

3) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use”.

55. London Plan Paragraph 5.5.2 highlights the conclusions of the Strategic Assessment of Need: Swimming Pools, Sports Halls and Artificial Grass Pitch provision in London 2017-2041 Facilities Planning Model, Sport England, July 2017, in stating, *“Current provision of swimming pools, artificial grass pitches (AGPs), and sports halls is not meeting demand”.*

56. With regards to safeguarding and promoting the culture and creative industries, London Plan Policy HC5 (A1) ‘Supporting London’s cultural and creative industries’, requires Development Plans and development proposals to:

“protect existing cultural venues, facilities and uses where appropriate and support the development of new cultural venues in town centres and places with good public transport connectivity. To support this, boroughs are encouraged to develop an understanding of the existing cultural offer in their areas, evaluate what is unique or important to residents, workers and visitors and develop policies to protect those cultural assets and community spaces”

57. London Plan Paragraph 7.5.4 expands on this policy in stating, *“London’s competitive land market means that the industry is struggling to find sufficient venues to grow and thrive, and is losing essential spaces and venues for cultural production and consumption including pubs, night clubs, venues that host live or electronic music and rehearsal facilities”*.

58. The ‘Cultural and leisure facilities’ section of the Local Plan, also recognises the important of cultural and leisure facilities and outlines at Paragraph 4.52 that, *“Some of Camden’s cultural and leisure facilities are considered to be at risk from demolition or a change of use due to the high values generated by alternative uses, particularly housing”*. Local Plan Paragraph 4.53 continues in stating:

“There are a number of sports facilities in the Borough including multi-purpose sports halls, fitness centres/gyms, swimming pools and bespoke provision for individual sports. There is a mix of private, voluntary and public sector providers and shared-use agreements are an important means of securing access for the wider community. It is desirable to protect these facilities, if viable. There is a very high level of demand on some sports facilities in the Borough linked to the large population of students and popularity of after-work sports activities”.

59. To this end, Local Plan Policy C3 ‘Cultural and leisure facilities’ sets out the Council’s aims to *“seek to protect cultural and leisure facilities”*. Where proposals involve the loss of such facilities, the Council considers the following:

“a. whether the premises are able to support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough;

b. the size, layout and design of the existing facility;

c. proposals for re-provision elsewhere;

d. the impact of the proposal on the range of cultural and leisure facilities; and

e. the mix of uses in the area”.

60. Local Plan Paragraph 4.61 sets out that in instances where a proposal would result in the loss of a cultural or leisure facility it is expected that the applicant is able:

“to demonstrate to the Council’s satisfaction there had been a search for alternative cultural and leisure uses for the site through a marketing exercise according to requirements which will be set out in Camden Planning Guidance. The marketing exercise should be undertaken over a period of not less than 12 months and be based on a realistic price/rent which is supported by the Council. Alternative uses should support culture and leisure strategies in Camden and London and provide benefit for the local community or protected groups”.

61. In addition to this, Local Plan Paragraph 4.62 further states:

“When a proposal would result in the loss of existing cultural or leisure uses, we will take into account the size, layout and design of the existing facility, the mix of uses in the area and proposals for the re-instatement of a cultural or leisure facility on-site or elsewhere”.

62. The Council’s CPG relates to the application of Local Plan Policy C3, and provides further guidance instances where Local Plan Policy C3 is engaged by a planning application.
63. Of relevance to the Site, the Council’s CPG expands on the requirements of marketing evidence to demonstrate an existing indoor sporting facility is no longer viable. Paragraph 3.18 of the Council’s CPG sets out:

“The Council will expect the applicant to demonstrate there not a need for alternative sports provision in the local area that the facility/site would be capable of hosting on a sustainable financial basis. These alternative sports uses should be appropriate for the size of the existing site and location and be agreed with the Council before the marketing commences”.

64. Paragraph 3.19 of the Council’s CPG continues, in setting out how such applications will be determined:

“When considering the need for provision for individual sports, the Council will take into account the nature and quality of provision that is currently available elsewhere in the local area. In determining relevant catchment distances, the Council will expect applicants to identify provision in the ward in which the existing sports facility is situated as well as in adjoining wards”.

65. As the Site is located in the Bloomsbury Conservation Area, S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies which states that *“in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area”.*
66. London Plan Policy HC1 ‘Heritage conservation and growth’ also states *“development affecting heritage assets and their settings should conserve their significance, by being sympathetic to the assets significance and appreciation within their surroundings”.*
67. Local Plan Policy D1 ‘Design’ states that development is required to respect the local character and context, preserve or enhance the historic environment in accordance with Local Plan Policy D2 ‘Heritage’, in addition to outlining general design principles governing the materiality of a proposal and its integration within the surrounding urban fabric.

Policy Considerations

68. London Plan and Local Plan policies are consistent in setting out protections for sporting, leisure and cultural facilities. Any application which would result in the loss of such a facility, would have to provide a robust justification for the loss, whilst being able to demonstrate an alternative for the re-provision

of the facility, whilst in the case of cultural facilities, the impact on the loss of cultural heritage is also a consideration in assessing the loss of the facility.

69. As a composite planning 'sui generis' use, the Property has sporting facilities in the form of the indoor swimming pool and gym, and cultural and leisure facilities in the form of the performance space, which is used for live music and the student bar.
70. The Property is also referenced in the Bloomsbury Conservation Area Appraisal and Management Strategy (2011) as being a positive contributor to the Bloomsbury Conservation Area, and therefore in considering any external works to the building to facilitate a change of use, S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, along with the heritage polices contained within the London Plan and Local Plan.
71. It is therefore considered that any application which is submitted to change the use of the Property, will have to take into account the following planning policy in order to demonstrate that the principal of development would adhere to adopted planning policy.

Loss of Sporting and Leisure Facility

72. In line with London Plan S 5 'Sports and recreation facilities' an application which results in the loss of a facility is required to provide a sports and recreational land assessment which demonstrates that the facility is surplus to requirements at a local and sub-regional level, with a Borough's needs assessment used to inform the applicant's assessment.
73. As outlined in the Students Union UCL correspondence to Jacob Rees Mogg MP, the swimming pool could be accessed by up to 100,000 central London students, whilst the Local Plan acknowledges that there is a high demand for sporting facilities in the Borough, linked to its large student population. This is ratified by the London Plan's Strategic Assessment of Need which concludes that the current provision of swimming pools and sports halls is not meeting demand across the city.
74. The information obtained under the FOI requests, set out that for the final year recorded there were 3,000 members of the gym and swimming, and with membership being open to the public as well as the wider student body, the loss of the facility at the Property would have a wider impact on demand for sporting facilities in the local area, as well as amongst the student population.
75. Any assessment would therefore have to provide a robust case for why the sporting facility at the Site is surplus to requirements, given the evidence of need and demand which can be demonstrated.
76. If a sporting facility cannot be deemed 'surplus to requirements', then London Plan Policy S 5 requires proposals which result in the loss of a sporting facility to be "*replaced by equivalent or better provision in terms of quantity and quality in a suitable location*" or proposals maybe acceptable if, "*the*

development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use”.

77. Birkbeck’s aspirations do not appear to involve the provision of an alternative sports and recreation facility, or re-provision of the existing facilities. Birkbeck may point towards nearby swimming and gym facilities, in the vicinity of the Site, however London Plan policy S 5 requires ‘better’ provision in terms of quality and quantity in a suitable location.
78. It is understood that the existing swimming pool is unique for a central London facility, due to the depth of the pool which enables a wide range of aquatic activities, which a normal pool would not likely accommodate. Correspondence from the Students Union UCL (dated 20/07/2021) states that the nearest such facility is 45 mins way in Bethnal Green, which could not be considered a suitable location for existing users. This issue would have to be addressed by any future application, which proposes removal of the existing sporting facilities.
79. Local Plan requirements for applications involving the loss of sporting and leisure facilities are addressed under the same policy as loss of cultural facilities, which is addressed below.

Loss of Cultural Facility

80. Local Plan Policy C3 sets out five considerations the Council takes into account when the application involves the loss of a cultural facility:
 - a. whether the premises are able to support alternative cultural and leisure uses which would make a positive contribution to the range of cultural and leisure facilities in the borough;*
 - b. the size, layout and design of the existing facility;*
 - c. proposals for re-provision elsewhere;*
 - d. the impact of the proposal on the range of cultural and leisure facilities; and*
 - e. the mix of uses in the area”.*
81. Whilst an application for the removal of the existing cultural facility may be able to meet some of the criteria set out by the Council in Local Plan Policy C3, it should be acknowledged that prior to its closure, the Property was able to viably support the cultural and leisure uses it provided. As the Site is located in central London the range of cultural facilities in the vicinity of the Site, would not be significantly diminished, however the performance space within the Property has cultural significance, as documented by correspondence from Edward Leahy, which would be a consideration in any application which aims to remove the cultural facilities.

82. Any future application, in addition to addressing the considerations outlined in Local Plan Policy C3, would also have to demonstrate to the Council's satisfaction that a search has been conducted for an alternative cultural use, through a marketing exercise, the details which are set out in the CPG.
83. It is understood that a tendering process was undertaken, when it was determined that the Property would be sold, with organisations encouraged to bid on the lease for the Property. However, without further details on this process, it is not possible to ascertain whether, the Council would accept this as a search for an alternative cultural use.
84. Nevertheless, the cultural significance of the building would be a material consideration when determining if the principal of the loss of cultural facilities in the Property would accord with the Local Plan.

Heritage

85. With regards to any proposal for external works on the Property to facilitate a change of use. As the building is a positive contributor to the Bloomsbury Conservation Area, the external changes will be subject to scrutiny and an assessment on whether the proposal would preserve or enhance the character and appearance of the Conservation Area, in line with s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and London Plan Policy HC1 and Local Plan Policies D1 and D2.

Conclusion

86. This Report describes the Site, sets out the legislative background as it relates to use classes and material change of use, before exploring the appeal and case law precedent for a 'students union' use. This Report then sets out the planning history of the Site along with the information sent to DWD from Students Union UCL concerning the existing use of the site and Student Union UCL attempts to preserve the sporting, leisure and cultural facilities at the venue. This Report then also highlights the relevant adopted planning policy and policy considerations for a change of use application.
87. Having detailed the three considerations when trying to identify the unit of planning at a site, as ascribed by the *Burdle* high court decision, this Report considers that the Property shares the characteristics of a composite planning 'sui generis' use. The building containing a mix of uses which are functionally and physically interlinked, which operate at different intensities, but are operating as a single planning unit, providing services predominantly to the wider student body.
88. Case law precedent in the case of *Burdle and Belmont Riding Centre v First SoS 2003*, outline that a change in scale or composition of the composite planning uses could be considered a material change of use, which would require planning permission. This is of particular relevance if Birkbeck aim to use

the majority of the building for teaching/administrative purposes, whilst retaining a small element of sporting/leisure to avoid having to submit a planning application.

89. The 2001 Appeal Decision, provides precedent for classifying a students' union as a 'sui generis' use class, whilst also highlighting that administrative/educational facilities that form part of a composite planning use in a students' union, does not establish the administrative/educational facilities as a separate planning unit, independent of the students' union.
90. The information reviewed sent by Students Union UCL is important in illustrating the need and demand for the sporting facilities, along with the cultural significance of the performance space at the Property. The initial legal advice sort by Students Union UCL, also shares the conclusions of this Report in respect of the planning use at the Site, that the Property is likely to be classified as 'sui generis'.
91. In exploring the policy considerations for a future planning application to change the use of the Property, the planning submission would be required to provide robust justification for the loss of the sporting, leisure and cultural facilities, including as this relates to the sports facility, that it is surplus to requirements or can be provided to a better standard. The future proposal would be required to accord with London Plan policies S 5 and Local Plan Policy C 3. In addition, any external works to the Property, would be scrutiny and an assessment on whether the proposal would preserve or enhance the character and appearance of the Conservation Area, in line with s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and London Plan Policy HC1 and Local Plan Policies D1 and D2.