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3 November 2023

Dear Sir,

**SECTION 191 TOWN AND COUNTRY PLANNING ACT 1990
CERTIFICATE OF LAWFULNESS APPLICATION REFERENCE 2023/3207/P
PROPERTY: STUDENT CENTRAL BUILDING, MALET STREET, LONDON WC13 7HY
OUR CLIENT: UNIVERSITY OF LONDON AND BIRBECK COLLEGE**

We write in response to the letter dated 10 October 2023 which was sent on behalf of UCLU in relation to the application made by Birkbeck College and the University of London ("**the Applicants**") under section 191 of the Town and Country Planning Act 1990 ("**the TCPA**") to certify that the lawful use of the property known as Student Central, Malet Street, WC1E 7HY falls within Class F.1(a) of Part B of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 ("**the Application**").

We note that the position taken by UCLU in its letter is inherently contradictory and ultimately self-serving: they ask that the determination of the Application be delayed only if the Council is minded to approve it, whilst maintaining that if the Council is minded to refuse the Application it should do so without delay.

We do not understand the Council yet to have reached a decision, preliminary or otherwise, in relation to the Application, not least because the Applicants' response to UCLU's representations dated 25 September 2023 has only been provided today. Now that the Applicants' response has been submitted, we consider that the Council should consider all the information before it and determine the Application without delay.

We do not consider UCLU's application for permission to bring a claim for judicial review to provide any basis for delaying the determination of the Application, since:

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1. UCLU's claim relates to the Council's letter of 17 May 2023. At present, the Court is tasked only with determining whether there is an arguable claim that the decision recorded in that letter is unlawful, having regard to the material which was before the Council at the time the decision was made. We do not consider UCLU's grounds of challenge to be arguable, but even if the Court were to grant permission, the Court's inquiry would be fixed by reference to the date and contents of the 17 May letter.
2. Since 17 May 2023, matters have progressed. The Applicants have made representations and provided some further evidence in support of the Application which were not before the Council on 17 May 2023, including the statutory declaration of Mr Steve Harwood. The Council should not now be constrained in its determination of an application submitted after the 17 May 2023 letter, supported by material which post-dates that letter, and which falls to be determined under a different provision of the TCPA.
3. Finally, UCLU ignore the potential for any decision on the CLEUD application to address concerns raised about the earlier decision of the Council (albeit that we do not accept those concerns to be arguable).
4. The determination of the Application is not merely a matter of discretion. Section 191(3) of the TCPA makes clear that, if the Council is satisfied that the use described in the Application is lawful, it has an obligation to grant a certificate to that effect.
5. The Council should not, as UCLU appear to suggest, refuse to grant the Application in order to free itself of the "dispute between UCLU and Birkbeck". Such an approach fails to recognise that (a) the Council's function under legislation is to determine the Application and not to act as "arbiter of [a] dispute between UCLU and Birkbeck";
6. UCLU are therefore wrong to say that "it would serve no purpose [for the Council] to determine" the Application before the judicial review proceedings are resolved. The "purpose" of determining the Application would be the fulfilment of the Council's statutory functions.
7. UCLU are also wrong to say that the Applicants would not be prejudiced by delaying the determination of the Application. The purpose of a lawful development certificate is to provide certainty, through the conclusive presumption in section 191(6) of the TCPA. Article 39(10) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 recognises that such certainty should be provided promptly (within 8 weeks). The Applicants would be prejudiced by the uncertainty that delay would entail.

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