

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/3207/P
<b>Officer</b>		<b>Expiry date</b>	
David Peres Da Costa		29/09/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
University Of London Union Building Malet Street WC1E 7HY			
<b>Conservation Area</b>		<b>Article 4</b>	
Bloomsbury CA		Article 4 Basements	
<b>Proposal</b>			
Use of the property for educational purposes (Use Class F1).			
<b>Recommendation:</b>		Grant lawful development certificate	

## 1. Site description

- 1.1. The application site is bounded by Malet Street, Torrington Place / Byng Place and Torrington Square (to the rear).
- 1.2. The application relates to a 5 storey building plus lower ground floor and basement. A site visit to the property was undertaken on the 21<sup>st</sup> September 2023. A planning enforcement officer had previously visited the site on 4<sup>th</sup> November 2022. At basement level there is a swimming pool (currently drained), sports hall and changing rooms. At lower ground floor there is a gym and yoga studio. The swimming pool is a triple height space and the sports hall is a double height space so there are voids on the floors above. At ground floor the main areas are a lobby, reception area, café, print shop and opticians. A former coffee shop / shop (disused) were behind roller shutters. At first floor there is a double height auditorium with stage and balcony, an area laid out as a bar (with bar counter and servery) and at the rear a large room with glazed elevation and glazed roof and adjoining kitchen.
- 1.3. At second floor and third floor the floor plates are divided up into a series of rooms: some with tables, chairs, white boards and flat screens and some rooms empty. There are toilets on both floors. At second floor, the wings of the floor plate have an additional mezzanine floor. At third floor, one wing is fully occupied by one large room with timber floor. At fourth floor, the floorplate was less sub-divided and the rooms were largely empty. There was a low level information counter (no longer in use) and kitchen areas.
- 1.4. The building is not listed and is located in the Bloomsbury Conservation Area.

## 2. Application

- 2.1. The application seeks to demonstrate that the use of all floors of the building for educational purposes (Class F1) has existed for 10 years or more such that the continued use would not require planning permission.
- 2.2. The applicant is required to demonstrate, on balance of probability that the use of the building for educational purposes (Class F1) has existed for a period of 10 or more years.
- 2.3. The evidence will be assessed to confirm whether for the 10 year period before the date of the application (04/08/2023), the use was as set out above. Evidence that pertains to the period 2013 to 2023 is therefore relevant.

### **3. Applicant's Evidence**

- 3.1. The applicant has submitted the following information in support of the application.
  1. An assessment of the planning history of the Property;
  2. A comparative review of the planning treatment of student union buildings of other University of London (UoL) member institutions;
  3. Discussion of relevant title matters, including a restrictive covenant affecting the Property;
  4. Correspondence from planning and real estate consultants and solicitors confirming their assessment of the existing use of the Property; and
  5. Detailed discussion of the actual use of the building supported by documentary evidence.
- 3.2. The applicant has also submitted a site location plan outlining the application site.
- 3.3. The 'Covering Letter' submitted by the applicant's agent DP9 sets out the evidence 1-5 (as described above) and this evidence is cross referenced to evidence provided in appendix A, B, C, and D.
  - Appendix A: Representation (with appendices) submitted by DP9 to the Council dated 30 November 2022 in response to correspondence received from the Council regarding an enforcement complaint made by Students' Union UCL;
  - Appendix B: Planning Contravention Notice (PCN), issued by the Council to the Applicant dated 21 February 2023;
  - Appendix C: PCN Response and appendices dated 13 March 2013 submitted by Pinsent Masons to the Council on behalf of the Applicant;
  - Appendix D: Note in Support of CLEUD Application prepared by Pinsent Masons LLP and dated 03 August 2023 (Supporting Note).
- 3.4. The 'Covering Letter' also includes two additional appendices which have been provided to give background context.

- Appendix E: Letter issued by the Council to DP9, as agent, dated 31 May 2023
  - Appendix F: Letter issued by the Council to DWD, as agent, dated 15 May 2023
- 3.5. Appendix A, 'the November DP9 representation', itself includes appendices A-E; this arrangement results in appendix A to E being followed by Appendix B of the evidence submitted for the current CLEUD application.
- 3.6. The applicant provided further evidence 6<sup>th</sup> November 2023, which was a Statutory Declaration of Stephen Harwood, the Student Central (SC) Manager from 22 August 2016 to 23 July 2021 who was in charge of all operations run by UoL from the application site. Prior to 22 August 2016 (from October 2004 onwards), he held the positions of Assistant to General Manager, deputy General Manager and Acting General Manager of the application site. As this information was provided several months after the original application was submitted, the 'Covering Letter' makes no reference to this Statutory Declaration in its discussion of the evidence. The contents of the Statutory Declaration are set out in paragraph 3.36 of this report.
- 3.7. Appendix A - Representation (with appendices) submitted by DP9 to the Council dated 30 November 2022
- 3.8. The DP9 representation considers the lawful land use of the site. DP9's conclusions are based on "our own research into the planning history of the Site, other notable examples of university/student union buildings as well as information gained from accompanying documentation that has been prepared to support this representation".
- 3.9. The representation states that University of London Student's Union was established in 1921 and was housed in various temporary locations until it found a permanent home within the site in 1957.
- 3.10. The DP9 representation considers uses such as the café and swimming pool to be ancillary to the primary use as an educational institution and not comprising separate planning units. The representation includes the following:
- 3.11. *"The swimming pool, for example, whilst enjoyed by customers outside of the 'ULU family', was nonetheless ultimately operated by ULU as part of the services and facilities provided by ULU as an educational institution. The limited use by members of the public is incidental, was not the original intent and has not assumed a new intent over time".*
- 3.12. The DP9 representation includes an assessment which discusses the evidence that DP9 assessed in determining the view that the site exists within an F1 Use Class. The evidence includes:
- the restrictive covenant that exists over the broader university campus;
  - the planning history of the site; and
  - information gathered from the planning history of other examples of buildings occupied by University of London member institutions.
- 3.13. *The Covenant*

3.14. The DP9 representation states the covenant restricts both the erection of new buildings on the land and their use thereafter. As regards use, no buildings may be erected on the land "except University and College Buildings in connection with the University of London...and no building shall at any time be used except for the purpose of such University and College buildings".

3.15. *Planning history*

3.16. Details of one planning application from the site's planning history where Class D1 is referenced.

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

3.17. *Relevant Member Institution Planning History*

3.18. Research presented of the planning history of the student union buildings of other Member Institutions of the University of London.

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

3.19. *Conclusion of the DP9 representation*

3.20. The DP9 representation concludes that their review, both of the site's planning history and the planning history of University of London member institutions, "supports the view that the site exists within an F1 use (previously D1), with all uses within the site (supporting student facilities and supporting office space) being ancillary to this primary educational use". Further the

representation states ‘this evidence is compounded with the existence of the restrictive covenant over the wider estate that only permits the creation and management of buildings for the direct purpose and use of the University of London’.

3.21. The DP9 representation also states that the predominant use of the site “is for teaching and learning – this floorspace occupies more floorspace within the building than any other land use”.

3.22. The DP9 representation was accompanied by the following additional evidence:

- Appendix A: Supporting Letter from the University of London, as freehold owner of the Site, confirming “UoL have always considered the provision of education (historically Use Class D1 – now F1) to be the primary usage of the building”. This was reflected in the leasing of the site to Birkbeck at a date after 2021.
- Appendix B: Supporting Letter from Gerald Eve, as rating advisor, which sets out the historic position of Student Central in respect of its treatment for business rates. They state that the “treatment of the Student Central building, as part of a single hereditament along with the University’s wider operational estate, reflects the status of the building as forming an integral part of the University’s estate and use in furtherance of the University’s purposes of higher education”.
- Appendix C: Supporting Letter from Avison Young, as valuation provider, confirming how the building was used and operated when carrying out their valuation in 2020. The letter concludes that their valuation of the building “as a university building with an educational use because in our opinion that was clearly the use of the building when we inspected it and any other uses were ancillary to the main purpose of education”.
- Appendix D: Building Survey Report prepared by Savills, confirming how the different floors of the property were used when they undertook inspections of the building on 2<sup>nd</sup> December 2020.
- Appendix E: Supporting Letter from Wedlake Bell, as legal advisors to leasehold owner Birkbeck, setting out that previous leases related to the site reveal “that the building has been used for a variety of different uses but in each case the use is consistent with either teaching or providing services ancillary to or in connection with the primary educational use of the building”. The letter also sets out the restrictions of the freehold title (the restrictive covenants) and confirms the lease, granted by University of London to Birkbeck in July 2021, restricted the use of the building for student teaching with associated ancillary and complementary uses.

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

3.24. A copy of the Council’s PCN which was issued due to a suspected breach of planning control, the breach being “the unauthorised material change of use from a ‘sui generis’ mixed use comprising student union, student support services, bar, auditorium, cafeteria and sports facilities to teaching space within the F1 non-residential use class without planning permission”.

- 3.25. Appendix C - PCN Response and appendices dated 13 March 2023
- 3.26. Response to PCN prepared by Pinsent Masons (the applicant's legal advisor) which sets out that the University of London confirms "that teaching and other educational functions have comprised the primary use of the building during (and prior to) that ten year period".
- 3.27. The PCN response referred to a series of enclosures with documentary evidence to support the above statement. Although the enclosures were not provided as part of the CLEUD application, they were already in the possession of the Council as they had been previously provided, alongside the PCN response, during the enforcement investigation.
- Enclosure 1 - Floor Plans showing the layout of the building together with corresponding room numbering schedule which sets out the current and previous room numbers.
  - Enclosure 2 - Invoices evidencing hire of rooms on the 2nd and 3rd floors of the building by UoL member institutions (including UCL, London School of Hygiene and Tropical Medicine and Birkbeck (Bbk)) for teaching and other educational purposes.
  - Enclosure 3 - UoL internal record of teaching (educational) events (2016 to 2021).
  - Enclosure 4 - Lease of part of fourth floor of the Property dated 19 December 2014 between UoL and UCL. Clause 5.9 sets out the authorised use of the demised property being as offices ancillary to education use.
  - Enclosure 5 - Lease of part of fourth floor of the Property dated 17 September 2015 between UoL and UCL. With regard to this document, it is noted that clause 5.9 sets out the authorised use of the demised property being as offices ancillary to education use.
  - Enclosure 6 – Tenancy at Will of property on level 2, level 2 mezzanine and level 3 of the Property dated 13 November 2017 between UoL and UCL. The Permitted Use is defined as use for the purposes of carrying out the Works and for the provision of education within sub-paragraph (c) of Class D1 of the town and Country Planning (Use Classes) Order 1987 (Use Classes Order) excluding student union or equivalent functions. The plans appended to this lease identify spaces used for educational purposes including a Med Physics Teaching lab, Media Labs and post grad study rooms, together with ancillary office spaces and facilities (e.g. kitchen, toilets etc).
  - Enclosure 7 - Lease of part of the ground floor of the building dated 30 April 2018 between UoL and Bbk. Clause 5.9 sets out the authorised use of the demised property being for the provision of services to students ancillary to education use within sub-paragraph(c) of Class D1 (now use class F1) of the Use Classes Order.
  - Enclosure 8 - Lease of property on level 2, level 2 mezzanine and level 3 of the Property dated 28 November 2018 between UoL and UCL. Clause 5.9 sets out the authorised use of the demised property being

for the provision of education within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order.

- Enclosure 9 - Lease of property on level 2, level 2 mezzanine and level 3 of the Property dated 10 September 2019 between UoL and UCL. Clause 5.9 sets out the authorised use of the demised property being for the provision of education within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order with part being authorised for use as storage ancillary to such use.
- Enclosure 10 - Lease of part of the ground floor of the building dated 25 February 2020 between UoL and Bbk. Clause 5.9 sets out the authorised use of the demised property being for the provision of services to students ancillary to education use within sub-paragraph (c) of Class D1 (now use class F1).
- Enclosure 11 - DP9 Representation dated 30 November 2022 previously provided to the Council (see paragraphs 3.7-3.22 above).
- Enclosure 12 – Screenshot from the website for Student Central which sets out details of the different forms of membership available. Membership was only made available to either existing students, alumni or UoL staff members. The stated benefits include “Entry to bars and the function rooms after 6:30pm”.

3.28. The PCN response to PCN question 2 provides evidence of how the second floor and floors above were used, as well as evidence of how the auditorium on the first floor was used. The evidence is provided alongside commentary. The PCN response to PCN question 3 provides the applicant’s understanding of how the bar, cafeteria and auditorium on the first floor were used alongside commentary. The PCN response to PCN question 4 provides the applicant’s understanding of how student support services on the ground floor were used alongside commentary. The services included a shop/print shop, opticians (University Vision), café and ancillary offices. The PCN response to PCN question 5 provides the applicant’s understanding of how sports facilities in the basement were used alongside commentary.

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

3.30. The note summarises the relevant planning history and activities carried out at the Property. The note states: “taken together, the PCN Response and supporting evidence demonstrates that the authorised use of the Property is for F1 educational use including ancillary office, leisure, retail and food and drink uses typically found in buildings used for such purpose”.

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

3.32. The letter relates to enforcement case EN22/0843 and relates to a possible breach of planning set out in paragraph 3.24 above. The letter concludes:

3.33. *“The Council considers that the primary use of SC is F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would*

*not be a material change of use requiring planning permission. While it is clear that SC was used by the public, especially the swimming pool, the Council considers that the whole building was predominately for students general educational needs including the extra-curricular activities that are recognised as an integral part of a university education and common to the majority of universities.”*

- 3.34. Appendix F - Letter issued by the Council to DWD, as agent for Students Union UCL, dated 15 May 2023
- 3.35. This letter also related to enforcement case EN22/0843 and includes the same conclusion as set out above.
- 3.36. Statutory Declaration of Stephen Harwood in support of the CLEUD application (reference 2023/3207/P)
- 3.37. Stephen Harwood was the Student Central Manager from 22 August 2016 to 23 July 2021 and was in charge of all operations run by UoL from the application site and had oversight of all operations carried out in the application site. The Manager of Energy Base, the UoL department which ran the leisure facilities in the basement and lower ground floor of the building reported to Mr Harwood as did staff operating the ground floor café, shop and reception facilities and the first floor student bars, auditorium and canteen.
- 3.38. During the period from 2 October 2004 to 21 August 2016, he held the positions of Assistant to General Manager, deputy General Manager and Acting General Manager of the Building.
- 3.39. *Building Use*
- 3.40. Stephen Harwood confirms that the description of the activities and use of the application site contained within the PCN Response is reflective of his understanding and experience of the operation of this building during the period from 2004 to 2021.
- 3.41. *Building Membership*
- 3.42. Stephen Harwood provided the following comments on building membership in relation to the Freedom of information (FOI) response provided by UoL to UCL on 20 August 2021. The FOI response provides membership data of the building, which is marked up as Exhibit SH3 in the Statutory Declaration, and provides an analysis of Energy Base membership records (marked up as Exhibit SH4 in the Statutory Declaration).
- 3.43. *“Throughout my period of involvement with the Building. a membership system was in operation whereby students of UoL colleges and UoL staff members were able to obtain free membership which would grant them access to the majority of the ancillary facilities within the Building (such as the bars, canteen etc.). This accounted for the vast majority of the memberships that were held in connection with the Building and, as such, the Building was predominantly used by students of UoL colleges.*



- 3.44. *A small percentage of Associate Memberships were also made available to students from other (non-UoL) higher education establishments within London. It is believed that these memberships would have accounted for the difference between the "Total Membership" figure and the "Members (Staff and Students)" figure in the FOI data.*
- 3.45. *No private (i.e. non-student/staff) memberships were available for the Building and therefore UCLU's suggestion that between 3,000 and 6,000 memberships were held by members of the public is incorrect.*
- 3.46. *The entrance to the Building was installed with an infra red counter which monitored the number of attendees to the Building. It is believed that this would have informed the "Per Day Access" figures in the FOI Data, which are clearly average figures (given the consistent number provided across all years).*
- 3.47. *My understanding is that students using teaching and learning spaces did make use of ancillary facilities as part of their visits to the Building. However, to my knowledge there was no system for recording who attended the Building (e.g. students/staff etc) and the use of different parts of the Building by students/non-students was not monitored I am therefore unable to definitively confirm the precise number of students that used the Building and which parts of the Building they would have accessed. I would however note that the membership data for the Building (as set out in [Exhibit SH3] and [Exhibit SH4], (discussed below)) is aligned with my understanding that all parts of the Building were predominantly used by students of UoL colleges."*
- 3.48. *Energy Base Membership*
- 3.49. Stephen Hardwood provided the following comments on Energy Base Membership
- 3.50. *"Despite the inconsistencies between the types of memberships that were recorded in the paper and electronic records, both sets of data demonstrate that the vast majority (between 72% and 80%) of Energy Base members were UoL students.*
- 3.51. *Associate memberships for Energy Base were available to other (non-UoL) higher education students, UoL staff and select Alumni.*
- 3.52. *Day passes for Energy Base were also promoted at Freshers' Fares with a view to attracting additional student members.*
- 3.53. *Latterly, clubs and societies memberships were also made available. These were again held by students (i.e. members of university clubs and societies) and provided access to specific facilities linked to the relevant clubs/societies (such as the pool or volleyball facilities) for a reduced membership fee.*
- 3.54. *Separate categories of "corporate" and "private" memberships were also available for Energy Base. Corporate memberships were available to groups of individuals employed by a particular entity who would be offered a preferential rate. As the records show, interest in this category of membership was very low, with only one corporate membership being recorded in 2019*

*(recorded as NHS and which I believe would have been associated with University College London Hospitals NHS Trust). Private memberships were available to members of the public, again with relatively low levels of interest (unfortunately the electronic records do not include a separate category of "private" memberships, however the paper records indicate that only 3% of the overall memberships for 2019 were held by private members). The low level of uptake for both corporate and private memberships indicates that most private individuals would have instead opted for a non-student facility."*

3.55. *Conclusion*

3.56. In the conclusion of the Statutory Declaration, Stephen Harwood provided the following more detailed comments on how the different parts of the building were used.

3.57. *"Throughout my period of employment, I understood the Building to be primarily used for educational use including ancillary purposes, with the 2<sup>nd</sup> and 3<sup>rd</sup> floor of the Building being primarily used for teaching and conferencing purposes, particularly during daytime hours. Use of the rooms on these floors by students enrolled in clubs and societies was largely contained to evenings. Teaching also continued in the evenings with Birkbeck hiring rooms for evening classes.*

3.58. *Student services (including housing, careers and print services) were provided on the ground and fourth floors with some of the rooms on the fourth floor operating a card entry system such that they could only be accessed by University students and staff members).*

3.59. *The Assembly Hall on the third floor was also used primarily for teaching, exams and other student activities.*

3.60. *The first and second floor Auditorium played host to events, including some music concerts. Unlike the remainder of the buildings, these events were run by a separate (non-UoL) entity and tickets would have been made available to the wider public. The Auditorium was prioritised for University use and any concerts would have been restricted to evening times to avoid disruption to teaching etc taking place within the building throughout the day I would estimate an average of around 10 music concerts per year took place in the auditorium, with that number potentially doubling during successful periods."*

3.61. *"The leisure facilities on the basement and lower ground floors were also predominantly used by students (as evidenced by the membership data discussed above) with the pool and sports hall also being made available to a local school for PE/swimming lessons and after school clubs.*

3.62. *The remainder of the Building was primarily used by students of UoL colleges, as evidenced by the membership data included in the FOI Response. A small percentage of memberships were also made available to non-UoL students.*

3.63. *Whilst some additional categories of membership were made available for Energy Base, the vast majority of members of the leisure facilities were students of UoL colleges."*

#### 4. Evidence from Students Union UCL

4.1. Students Union UCL (SU UCL) have been in discussions (since 2021) with the Camden Planning Enforcement team in relation to the lawful planning use of the application site. Their view is that the existing lawful planning use of the building is a composite planning 'Sui Generis' use and they have submitted information to support this view.

4.2. The SU UCL submission includes the following:

- Formal response to the CLEUD application prepared by DWD dated 25 September 2023
- Appendix 1 Extracts from 'Students' Union UCL v LB Camden and Others' Judicial Review Core Bundle (CB) dated June 2023
- Appendix 2 'Planning Due Diligence Report', prepared by DWD dated 17/08/22
- Appendix 3 'Additional Information Planning Note', prepared by DWD, dated 14<sup>th</sup> April 2023
- Appendix 4 Appeal Decision for Application Ref: PT/00/02169/FULL

4.3. In their formal response SU UCL cross references information provided in the submitted appendices. The response begins by setting out relevant case law including 'whether a use is ancillary' (with reference to legal judgements of what an ancillary use is in London Residuary Body v SSE [1989]), 'definition of the planning unit' (with reference to Burdle v SSE [1972]) and 'whether a change in the components of a mixed-use building would constitute development'.

4.4. The SU UCL response includes a website image from October 2021 which shows the layout of the Property. This was taken from the 'What is Student Central' page on the former SC website (studentcentral.london).

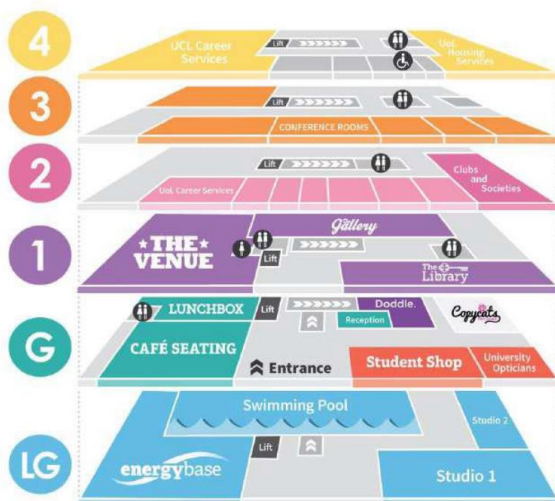


Image 1: Image from 'What is Student Central' page on the Student Central website (studentcentral.london) [October 2021]

4.5. The SU UCL response sets out the uses of different floors within the application site.

- The fourth floor contained offices relating to the UCL Careers services between 2005-22 and "were not used for teaching facilities". Details of how

UCL careers operated are set out in a letter prepared by Karen Barnard (Director, UCL Careers).

- The second and third floors contained multi-use activity rooms. Offices also located on the second-floor mezzanine.
- The first floor contains two bars ('Gallery' and 'The Library') along with the grand hall multi-use space ('The Venue') which was used for live music performances and nightclub nights.
- The ground floor contains a shop selling student supplies, a café, printing shop and opticians, along with the reception area.
- A swimming pool, sports hall, gym and fitness classes are located in the lower ground floor.

- 4.6. The SU UCL response states that members of the public, in addition to students had direct access to the building which resulted in the café, bars and sports facilities being used by the local community. Evidence of this is included in a witness statement made by Dr McBay in the Core Bundle (CB/109).
- 4.7. The SU UCL response states that rooms on the first to third floor of the Property, were available to be rented by not just students but also members of the public, and that there were "a number of businesses providing community services located in the Property, such as the opticians and printing shop on the Ground Floor". Evidence of this is provided in Core Bundle CB/333-336 in the form of screenshots of the booking portal on the SC website, for rooms on the first – third floors of the application site.
- 4.8. The SU UCL response claims that teaching and educational use of the rooms on the first to third floors appears to be limited. Evidence of this is provided in Core Bundle CB/109 which is a witness statement made by Dr McBay. Dr McBay states he frequently used the facilities at SC between 2011-2021 and that he was involved in various forums concerned with the running of SC "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".
- 4.9. The SU UCL response raises concerns with invoices (referred to in the applicant's PCN Response and appendices), "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". The SU UCL response considers that the invoices "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".
- 4.10. The SU UCL response makes the point that the leisure facilities in the lower ground floor of the application site were also used by members of the public, in addition to students. Their response states "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."
- 4.11. "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". Evidence of this is provided in Core Bundle CB/329 in the form of table titled 'FOIA - Student Central Usage'

- 4.12. The SU UCL response states that 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. Evidence of this is provided in Core Bundle CB/344 in the form of screenshots of the Energybase Membership Plans from the SC website. Evidence of its role as a "hub for the community" is provided in Core Bundle CB/105-106 in the form a witness statement made by Dr McBay which states he "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".
- 4.13. The SU UCL response states that the swimming pool 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".
- 4.14. The SU UCL response states that the first-floor auditorium held concerts open to the wider general public. Evidence of this is provided in Core Bundle CB/109 in the form a witness statement made by Dr McBay which states "events held at Student Central, such as gigs, could be attended by members of the public by purchasing tickets on online booking platforms such as Ticketmaster – i.e. gigs were not limited to attendance by students. By way of example, I attended a Newton Faulkner gig in 2017 by purchasing tickets on Ticketmaster".
- 4.15. The SU UCL response states that concerts held in the first-floor auditorium date back to the 1960s. Evidence of this is provided in Core Bundle CB/206 in the form of a letter from Tom Kiehl (Deputy CEO and Director of Public Affairs, UK Music) which states that "ULU has particular significance for the UK music industry, being the location of an iconic photoshoot with The Beatles in 1963 and home to legendary concerts from The Clash, The Sex Pistols, Joy Division, Led Zeppelin, The Smiths, Scritti Politti, My Bloody Valentine, Coldplay and Blur, mainly in the early stages of their careers".
- 4.16. SU UCL Comments on Applicant's Evidence
- 4.17. The SU UCL formal response to the CLEUD application includes comments on the applicant's evidence on property use. Their response raises concerns with the Supporting Letter from Avison Young and the Building Survey Report prepared by Savills. These are included as appendices (appendix C and D respectively) of the Representation submitted by DP9 to the Council dated 30 November 2022.
- 4.18. SU UCL Comments on the Planning Use
- 4.19. The SU UCL formal response puts forward their assessment of the lawful use of the property. Their main points being:
  - *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.*

- *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.*
- *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'.*
- *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 only assert that a primary educational use took place across the second and third floors of the Property, as well as possibly the fourth floor.*
- *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 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 the second to fourth floors of the Property.*
- *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.*
- *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.*

#### 4.20. SU UCL 'Appeal Precedent'

4.21. The SU UCL response refers to an appeal at 104-108 Bolsover Street, London (LPA ref: PT/00/02169/FULL). The response includes the following:

4.22. *'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".'*

4.23. The SU UCL response draws attention to the parallel between this appeal case and the application 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".

- 4.24. SU UCL comments on the LBC planning enforcement letter issued to DWD (Appendix F of the applicant's Covering Letter)
- 4.25. The SU UCL takes issue with the Council's letter and the conclusions drawn from the *Young High Court* judgement.
- 4.26. SU UCL comments on the Applicant's analysis
- 4.27. The SU UCL response makes the following points:
- The planning history of the application site provides little indication as to the planning use of the application site.
  - Incorrect for the applicant to draw direct conclusions from the planning history of the UoL member institutions. In the majority of cases, there is a differing site context to that of the application site.
  - In relation to the LSE application (ref: 10/01617/FULL) for their students' union building, the description of development specifies an erection of a higher educational building as Use Class D1. However, 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 describes as "within the main LSE campus".
  - 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.
- 4.28. Appendix 1: R(UCLU t/a Students' Union UCL) v LB Camden Core Bundle
- 4.29. The Core Bundle relates to the SU UCL's application for permission for Judicial Review (JR) of LBC's decision, in a letter dated 17 May 2023, that a material change of use had not taken place at Student Central. The Grounds of the application for permission for JR were as follows:
- Ground 1: unlawful consideration of other planning units
  - Ground 2: unlawful consideration of the property title
  - Ground 3: failure to consider whether educational use takes place at Student Central and inadequate reasons
  - Ground 4: inconsistency
  - Ground 5: procedural unfairness
  - Ground 6: irrational
- 4.30. The Core Bundle includes the following:
- Witness Statement of John Dubber, Chief Executive of UCLU (trading as SU UCL). This statement highlights a change in the way the second to fourth floors of the application site was used after 2014. Mr Dubber states that the UoL began to gradually use these spaces for other purposes, "and for a limited amount of teaching and external room hire".
  - Witness Statement of David McBay, a frequent user of the facilities at the application site between 2011 and 2021 and who was involved in various forums concerned with the running of SC.
  - Letter prepared by Karen Barnard (Director, UCL Careers) providing details of UCL Careers use of the 4<sup>th</sup> floor of SC from 2005 to July 2022

- Letter prepared by David Martin, CEO, Featured Artists Coalition expressing concern over the closure of an historic live music venue
- Letter prepared by Anneliese Harmon (GM, Music Managers Forum) expressing concern over the closure of an historic live music venue.
- Letter prepared by Clara Cullen (Venue Support Manager, Music Venue Trust) which supports the aims of the UCL campaign to ensure that live music programming remains at ULU Live.
- Letter prepared by Tom Kiehl (Deputy CEO & Director of Public Affairs, UK Music) setting out that the venue plays a significant part in the UK's music heritage and should remain protected as a cultural venue.
- FOIA - Student Central Usage and membership figures for years 2014 to 2020
- Screenshot of 'What is Student Central' setting out the facilities provided at SC (from [www.studentcentral.london/about/whatisstudentcentrallondon/](http://www.studentcentral.london/about/whatisstudentcentrallondon/))
- Screenshot from Conferences Central which shows range of conference rooms that could be booked at SC on the second and third floor (from website: [www.studentcentral.london/conferences/rooms/](http://www.studentcentral.london/conferences/rooms/))
- Screenshot of Energybase Membership Plans for students and non-students (from: [www.studentcentral.london/energybase/membership/](http://www.studentcentral.london/energybase/membership/))

4.31. Appendix 2: 'Student Central, Malet Street, Planning Due Diligence Report', prepared by DWD dated 17/08/22

- The purpose of the report is to establish the Use Class of the existing students' union.
- DWD based their report on desk-based assessment and a review of information sent from SU UCL.
- Reference is made to appeal and case law precedent and their application to the application site.
- The report set out various information received by DWD from SU UCL including lobbying correspondence, legal advice, correspondence with Bartlett School of Planning, site photos, and FOIs.
- The report concludes that "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"
- The report deals with issues which would be relevant if planning permission were required for a change of use.

4.32. Appendix 3: 'Student Central, Malet Street Additional Information Planning Note', prepared by DWD dated 14/04/2023

4.33. The note states its purpose is "to provide additional information requested by the Council which includes setting out nearby uses/occupiers in the vicinity of the Site, demonstrating need and demand for the services at the Property, and a business case for continued operation of the Site as a students union".

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



- 4.35. Appendix 4 is the Planning Inspectorate's decision letter for 104-108 Bolsover Street which is 'the appeal precedent' referred to in paragraph 4.20 to 4.23 above.
- 4.36. SU UCL response to the Statutory Declaration of Stephen Harwood
- 4.37. SU UCL commented on Stephen Harwood's Statutory Declaration and highlighted two parts of Mr Harwood's declaration which related to 'The Venue'
- 'The Venue' had hosted concerts and tickets would have been made available to the wider public; and
  - 'The Venue' would host an average of 10 concerts a year with this potentially rising up to 20, during successful periods.

## 5. Council's Evidence

- 5.1. A search of the property's planning history identified 30 applications. Of these only four referenced a Use Class (see paragraphs 5.8-5.11). Details are also provided of those applications which had plans available to view and which could be of assistance in understanding the history of the building layout.
- 5.2. **4133**: The erection of a students' Union Building of basement and five storeys over, and a single-storey Thermal Storage chamber for the University of London on sites at Malet Street and Byng Place, Holborn. Granted 8<sup>th</sup> June 1949
- 5.3. **35305**: Installation of a hydraulically operated hoist between pavement and basement levels and the formation of a delivery entrance at basement level. Granted 27/01/1983
- 5.4. **8800371**: Works of alteration including the construction of a new doorway and the construction of a new stair access in connection with the installation of an automated telling machine. Granted 08/11/1988
- 5.5. **9300207**: The erection of a conservatory bar and restaurant on the existing roof terrace at rear first floor level together with associated internal alterations at the University of London Union Building. Granted 22/07/1993
- 5.6. **9401743**: The erection of an external fire-escape staircase at first floor level. Granted 06/01/1995
- 5.7. **PSX0105375**: External alterations associated with the provision of mechanical and electrical services. Granted 22/04/2002
- 5.8. **2006/0853/P**: Installation of new access ramp with metal handrail and glass balustrade to enable access to existing ATM, installation of 5x external domed lights at ground floor level to the front elevation of the educational institution (**Class D1**). Granted 07/04/2006
- 5.9. **2010/0895/A**: Temporary display of non-illuminated vinyl banner over the front elevation entrance to use **Class D1** building. Granted 01/04/2010

- 5.10. **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 23/08/2013
- 5.11. **2014/4556/A**: 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. Granted 2014/4556/A
- 5.12. There is also relevant enforcement history for the application site.
- 5.13. **EN22/0843**: Possible change of use and demolition works.
- 5.14. A letter from the enforcement officer to the applicant's planning consultant dated 31<sup>st</sup> May 2023 includes the following:
- 5.15. *"The Council considers that the primary use of SC is F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings and that its use for traditional class room teaching would not be a material change of use requiring planning permission. While it is clear that SC was used by the public, especially the swimming pool, the Council considers that the whole building was predominately for students general educational needs including the extra-curricular activities that are recognised as an integral part of a university education and common to the majority of universities"*.
- 5.16. SU UCL applied for permission for Judicial Review (JR) of LBC's decision that a material change of use had not taken place at Student Central. The application for permission to apply for judicial review was refused 29<sup>th</sup> November 2023.
- 5.17. Planning history for other sites
- 5.18. Former Royal Ear Hospital and Former Student Union Building Capper Street / Huntley Street
- 5.19. **2015/1281/P**: Erection of a 6 storey building and excavation works to create a 3 storey basement, comprising a head and neck outpatient hospital (Class D1) following demolition of the former UCL Student Union and Royal Ear Hospital buildings. Granted Subject to a Section 106 Legal Agreement 20/01/2016

## 6. Statutory provisions

- 6.1. Section 149 of the Equality Act 2010, sets out the Public Sector Equality Duty (PSED). A public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.2. While the statutory duty is noted, the decision on a lawful development certificate is a determination of fact.

## **7. Council's comment on the applicant's and SU UCL evidence**

- 7.1. A variety of evidence has been provided by the applicant to help establish the lawful planning use. Likewise, the evidence provided by SU UCL will also be discussed.
- 7.2. The planning history of the application site provided by the applicant and available on the Council's database is of little assistance. Of the 30 applications for this site, only four refer to a Use Class. Those four applications do not accord with each other as to the Use Class. Two applications describe the site as 'Class D1', which is defined in the Use Class Order 1987 as non-residential institutions. 'Part c' of this Class is 'any use not including residential use for the provision of education'. Such a use would now fall within the F1 Use Class. Two applications describe the site as 'Class D2', which is defined in the Use Class Order 1987 as Assembly and leisure. It is noted that 'part e' of this Class refers to use as a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations. None of the applications reviewed including those that referenced a Use Class were making a considered determination of the planning use of the property.
- 7.3. The DP9 representation highlights a number of planning decisions relating to members institutions of the University of London, where Students' Union uses appear to be considered as part of a D1/F1 educational use. Given that this is a selective planning history, without full details of each case, this evidence is generally of limited assistance. Moreover, it is not clear that these are formal Council determinations on the Use Class of a Student's Union.
- 7.4. More weight is given to the LSE Student Centre application (ref: 10/01617/FULL) as this involves the erection of a building with no apparent teaching or learning floorspace which the description of the proposal nevertheless refers to as 'Class D1'. The committee report states that "the proposed building incorporates a number of complementary services including the Student's Union offices, a learning café, a main events space, a multi-faith prayer centre, a pub, advice facilities, accommodation and careers offices, gym and a media centre". Section 6.1 of the committee report, which deals with land use, states that "the proposed redevelopment would create 5132sqm of educational floorspace". It also states that the 460sqm events space was "considered to be an "ancillary" function of the Student Centre forming only 9% of the total floorspace and is a common function on University campuses".
- 7.5. Weight is also given to the application within LB Camden at the 'Former Royal Ear Hospital and Former Student Union Building' site (ref: 2015/1281/P). This application involved the demolition and replacement of a Student Union with an outpatient hospital. The committee report stated that there was no change of use as both uses were within same D1 use class: "It is understood the lawful use of both buildings are D1 (non-residential institutions), the proposed use as an outpatient hospital would also fall within the D1 use class, therefore there is no material change of use at the application site."

- 7.6. However, in both of the cases above, it is unclear what other factors may have influenced the decision to identify them as Class D1. For example, SU UCL have highlighted that the LSE students' union building is located within a cluster of LSE buildings which the officer's report describes as "within the main LSE campus". In such cases, SU UCL suggest it could be argued that the campus is the planning unit and the students' union is ancillary to this primary use. While assessment of land use and use class were important in both cases, the applications were not purely a formal Council determination of what use class a Student's Union should fall within.
- 7.7. An appeal precedent relating to the planning use of a student's union building has been provided by SU UCL. The DWD Planning Due Diligence Report (appendix 2 of SU UCL's submission) states that "the closest example of a students' union building, of similar context to the Site, is the case of 104-108 Bolsver [*sic*] Street, London (LPA ref: PT/00/02169/FULL)". In the appeal decision, the Inspector stated, "The use of the building as a Students' Union was a *sui generis* use and although parts of the building were used as office space, 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". The SU UCL response includes the following.
- 7.8. *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'.*
- 7.9. Having reviewed the Bolsover appeal decision it is apparent that the decision identifies the use of the building as a Students' Union as *sui generis*, with no information as to why the Student's Union was *sui generis* and no discussion as to why the use did not fall within, for example, the then Class D1 of the Use Classes Order. Limited reliance can therefore be placed on this appeal decision as demonstrating that use as a Students' Union is a *sui generis* use.
- 7.10. The applicant's submission draws attention to the restrictive covenant which states buildings within the Precinct (in which the Site is located) may only be used for purposes of University and College Buildings in connection with the University of London. It is not clear that the existence of the covenant would prevent uses other than education (Class F1) which are nonetheless connected with the purposes of a University, for example student housing which is a *Sui Generis* use. There is also merit in SU UCL's argument that the restrictive covenant provides no evidence of the actual usage of the application site.
- 7.11. The supporting letter from Avison Young and the Building Survey Report prepared by Savills are of limited assistance in establishing the lawful planning use. Each of these submissions provides a description of the use of the building on the day of their visits in December 2020. The supporting letter from Gerald Eve sets out the historic position of Student Central in respects of its treatment for business rates and confirms that it has been treated as a single hereditament with other University of London buildings for rating purposes. This supporting

letter is of little assistance in establishing the lawful planning use as the definition of the hereditament does not require an assessment of the planning use of the building, but rather (among other things) whether one part of a hereditament “is necessary for the effectual enjoyment of the other” (Woolay (VO) v Mazars [2015] UKSC 53 at para.12).

- 7.12. The statutory declaration provided by Stephen Harwood is of more help in establishing how the property was used in the 10 years before the CLEUD application was submitted. He was the Student Central Manager from 22 August 2016 to 23 July 2021 and was in charge of all operations run by UoL from the application site and had oversight of all operations carried out in the application site. The Manager of Energy Base, the UoL department which ran the leisure facilities in the basement and lower ground floor of the building reported to Mr Harwood. Prior to 21 August 2016 (from 2004 onwards), he held the positions of Assistant to General Manager, deputy General Manager and Acting General Manager of the Building.
- 7.13. Basement and lower ground floor
- 7.14. The plans submitted by the applicant are not annotated with uses so have been cross referenced with historic plans as well as photographs taken during the site visits. As set out in the site description (section 1 of this report), at basement level there is a swimming pool, sports hall and changing rooms. At lower ground floor (labelled first floor on the applicant’s plan) there is a gym and yoga studio. The swimming pool is a triple height space and the sports hall is a double height space so there are voids on the floors above. The PCN states that the basement leisure facilities were owned and operated by Energy Base, a departmental body of UoL and were hired to local schools for PE / swimming lessons and after school clubs. This is confirmed by the statutory declaration which also states that the leisure facilities on the basement and lower ground floors were predominantly used by students and that digital and paper Energy Base membership records demonstrate that between 72% and 80% of Energy Base members were UoL students. The Energy Base Membership Records for 2019 (provided as Exhibit SH4 of the statutory declaration) are set out below.
- 7.15. While details have been provided for membership of Energybase, there is no detail of how the leisure facilities were used from day to day. For example, some members may hardly use the facilities, while others may attend every day. While we have ‘per day access figures’ (which appear to be averages), the statutory declaration also states that “there was no system for recording who attended the Building (e.g. students/staff etc) and the use of different parts of the Building by students/non-students was not monitored”. Given that membership is not synonymous with usage, the evidence of usage of Energybase provided by membership can only be indicative. Nevertheless, given the very small percentage of private members, this caveat is not considered to undermine the broad statement in the statutory declaration that “The leisure facilities on the basement and lower ground floors were also predominantly used by students”.
- 7.16. It is unclear exactly how the Energy Base Membership Records for 2019, which show that student memberships were by far the largest category of membership, relates to the PCN response which mentions ‘low student uptake’ and the steps taken to increase membership of Energybase. The PCN includes the following:

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

7.18. It is possible that even though student memberships were by far the largest category of membership (at least in 2019), this level of membership was still considered low in comparison to the total number of students who were eligible for membership and that the facilities were not used to capacity.

#### ANALYSIS OF ENERGYBASE MEMBERSHIP RECORDS

##### 1. Energy Base Electronic Membership Records for the year 2019

	Total	Student	Non-Student	Staff	Single-Sport	Online halls of residence
Memberships	3642	2635	118	299	300	290

##### 2. Energy Base Paper Membership Records for the year 2019

	Total	Student	Associate	Private	Single-Sport	Missing data	Student Halls	Corporate
Memberships	2849	2265	372	59	31	75	46	1
No. of memberships associated with Bloomsbury Universities*	2297	1986	217	0	8	48	38	0
No of memberships associated with University of London Member Institutions	2453	2144	192	1	19	55	42	0

\* This includes colleges with campuses/student halls of residence within a 1500m radius of Student Central, including Birkbeck, LHSTM, SOAS, UCL, UoL, New College of Humanities, The Bloomsbury Institute and LSE

7.19. The summary of electronic membership for 2019 includes higher figures than the paper membership records across all categories of membership. Stephen Harwood has explained that this is due to the digital records including renewed memberships and online applications (including online halls of residence memberships) and have therefore resulted in a higher number of entries. Private memberships were available to members of the public and the paper records for 2019 indicate that only 2% of the memberships were held by private members for that year.

7.20. Evidence provided by SU UCL includes an archive image from the Student Central website showing the membership plans for Energybase. The date of this archive image appears to be September 2020. This confirms that Energybase offered a variety of memberships including day passes, 1, 3, 6 and 9 month passes as well as annual memberships and that there were different rates for student and non-students. While non-Student memberships were available to the general public, there was a one-off joining fee of £50.

# Membership Plans

Non-Student membership is available to the general public. There is a one-off joining fee of £50

Membership Type	Day Pass	1 month	3 months	6 months	9 months	12 months
Student	£8	£27	£80	£145	£210	£240
Non-Student	£10	£35	£90	£170	£250	£310
Halls/Student Homes	N/A	N/A	N/A	N/A	N/A	£180
Corporate	For corporate memberships, please contact <a href="mailto:brenda.francis@london.ac.uk">brenda.francis@london.ac.uk</a>					

\* All day passes require photo ID at purchase. Memberships are non-refundable and non-transferable.  
 \*\* Non-student membership are subject to £50 one off joining fee. Student Central cards are free

Energybase offers a variety of gym memberships to suit the needs of all, including day passes to annual memberships, from student rates to private rates.

All membership to Energybase include:

- Full use of the gym and swimming pool during our opening hours
- Access to all fitness classes, seven days a week
- Free advice and gym inductions\*\* with skilled Energybase instructors

Energybase offers discount rates for students, graduates and staff of the University of London, as well as other selected institutes. To qualify for certain rates, you will need to get a **Student Central Card** from Student Central's main reception. These are printed free for students of UoL and non-student members, and cost £40 for staff and graduates of UoL and students of universities or colleges outside of the UoL.

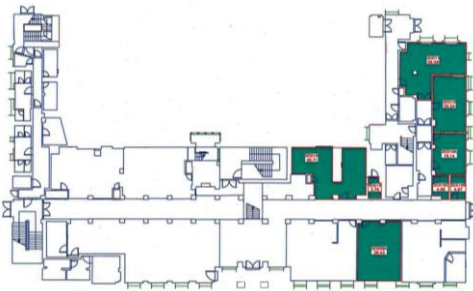
- 7.21. It is unclear how the total memberships for various categories of membership recorded in the paper and electronic membership records (provided as evidence with the statutory declaration), reconcile with the 'Energybase' membership plans which include day passes, 1, 3, 6 and 9 month memberships as well as annual memberships. That is to say, no details have been provided of what the breakdown is of the total number of memberships in terms of length of membership. Neither have details been provided as to whether the number of day passes were recorded and if so how. However, the SC website information does state that non-student membership were subject to a £50 one off joining fee. This suggests that non-student purchase of a day pass would require a joining fee and that this membership would then be recorded in the overall electronic membership records. It is considered a reasonable assumption that after the purchase of the initial £50 membership, subsequent purchases of day passes by that 'member' would then not be recorded for the year in question. Likewise, for the purchase of non-student 1, 3, 6 and 9 month memberships. It is also considered likely that student day passes and 1, 3, 6 and 9 month memberships would operate in a similar way.
- 7.22. The membership plans shown on the September 2020 archive image from the Student Central website is at variance with the applicant's PCN response which states that "memberships were not made available to the general public" and that a decision was taken to offer a limited number of day passes to members of the general public during the latter stages of operation. The archive web image of the Energybase memberships indicates that private memberships were not just restricted to day passes and that the length of membership offered to private members mirrored that offered to students in September 2020. Further evidence of private membership being offered is available at the internet archive<sup>1</sup>. This shows private membership was offered as set above from at least March 2015.
- 7.23. SU UCL have advised that the pool was used by Out to Swim and British Naturism. A letter from Out to Swim, an LGBT+ swimming group refers to twice weekly sessions between 2006 and 2020. Likewise, a letter from British Naturism confirms that it was used on a weekly basis from April 2012 until March 2020 (prior to the Covid pandemic). It is a reasonable assumption that the electronic membership figures take account of the use by members of these clubs / organisations.

1

<https://web.archive.org/web/20150312080735/http://www.studentcentral.london/energybase/membership/privatemembership/>

## 7.24. Ground floor

7.25. At ground floor the main areas are a lobby, reception area, café, print shop and opticians and office space. The PCN response confirms that there was no restriction preventing members of the public from using these facilities but their primary purpose was to service the needs of students. Evidence has also been provided that part of the ground floor (shown in green on the plan below) was leased to Birkbeck from 13<sup>th</sup> November 2017 to 31<sup>st</sup> July 2020. Clause 5.9 of the lease sets out the authorised use of the demised property being for the provision of services to students ancillary to education use within sub-paragraph (c) of Class D1 (now use class F1) of the Use Classes Order. SU UCL have provided an image from the 'Student Central' website which appears to indicate that a greater proportion of the ground floor provided student services prior to the Birkbeck November 2017 lease.



## 7.26. First floor

7.27. According to the PCN, the first floor consists of student bar, cafeteria, and auditorium space. The PCN confirms that these facilities were predominantly used by students and that “members of the general public would be less likely to walk in off the street and use them” due to their location on the first floor. The PCN confirms that the auditorium has played host to a variety of events, including music concerts and that this space was also regularly used for educational purposes including being used for teaching and hosting exams. The documented evidence for use as exam space is limited and consists of invoices dated 3 March 2014 and 26 November 2015.

7.28. The statutory declaration includes the following.

7.29. “The first and second floor Auditorium played host to events, including some music concerts. Unlike the remainder of the buildings, these events were run by a separate (non-UoL) entity and tickets would have been made available to the wider public. The Auditorium was prioritised for University use and any concerts would have been restricted to evening times to avoid disruption to teaching etc taking place within the building throughout the day I would estimate an average of around 10 music concerts per year took place in the auditorium, with that number potentially doubling during successful periods.”

7.30. The SU UCL response notes that the first floor auditorium was available for hire by ‘members of the public’ through the booking portal on the Student Central website (Appendix 1 of SU UCL response, CB/333). The availability of this room



for external hire by businesses and individuals does not provide firm evidence of how often it was used in this way.

- 7.31. The SU UCL response states the first floor auditorium (described as 'The Venue' on the SC website image that they provided) was used for nightclub nights as well as live music performances.
- 7.32. Second and third floor and mezzanine
- 7.33. The PCN states that the second floor has been used for educational purposes "as evidenced by the invoices, receipts and bookings lists". The use of these floors for teaching / conferencing was evidenced by Steven Harwood's statutory declaration. He stated "the 2nd and 3rd floor of the Building being primarily used for teaching and conferencing purposes, particularly during daytime hours. Use of the rooms on these floors by students enrolled in clubs and societies was largely contained to evenings. Teaching also continued in the evenings with Birkbeck hiring rooms for evening classes".
- 7.34. A Witness Statement of John Dubber, Chief Executive of UCLU (trading as SU UCL) was included in the SU UCL evidence. This statement highlights a change in the way the second to fourth floors of the application site was used after 2014. Mr Dubber states that the UoL began to gradually use these spaces for other purposes, "and for a limited amount of teaching and external room hire". In addition, the SU UCL response considers that the invoices evidencing hire of rooms on the 2nd and 3rd floors provided by the applicant "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". Neither the content of the witness statement nor the lack of invoice data are considered to be sufficient to undermine Steven Harwood's statutory declaration that the 2nd and 3rd floor of the application site were primarily used for teaching and conferencing purposes which is considered to be persuasive.
- 7.35. The SU UCL response states that the second and third floors contained "multi-use activity rooms" and that these rooms were available for external hire by student clubs. This accords with the statutory declaration which states that the use of these rooms by "clubs and societies was largely contained to evenings".
- 7.36. The SU UCL response also states that the booking portal on the Student Central website, for rooms on the first – third floors of the Property, were available for hire by members of the public. While this may have been the case, this does not undermine the statutory declaration which states that the primary use of the 2<sup>nd</sup> and 3<sup>rd</sup> floor was for teaching and conferencing purposes.
- 7.37. The SU UCL evidence provided by Dr McBay states that "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". While Dr McBay was a frequent user of the facilities between 2011-2021 and was involved in various forums concerned with the running of SC, his level of knowledge of the operational aspects of the building would not be comparable to Steven Harwood's, who was the SC manager and prior to that general manager (or similar) and worked there on a daily basis. Therefore, Steven Harwood's description of the use of these floors as being

primarily used for teaching and conferencing purposes is not undermined by Dr McBay’s statement and the SU UCL response that teaching and educational use of the rooms on the first to third floors appears to be limited.

7.38. On the third floor, one wing is fully occupied by one large room. The statutory declaration confirms that this room, ‘the Assembly Hall’, was “used primarily for teaching, exams and other student activities”.

7.39. Fourth floor

7.40. According to the PCN, the fourth floor of the application site was used for the careers and housing services as well as teaching space. SU UCL response does not mention the housing service but states that this floor was used by UCL Student Services, as offices for their staff and to meet with students wishing to speak with careers advisors. However, the SU UCL response includes an image of the building layout from the SC website (from October 2021) which identifies part of the floorplate as providing housing services (as shown below).



7.41. The statutory declaration confirms that some of the rooms on the fourth floor operated a card entry system such that they could only be accessed by university students and staff members.

7.42. Building membership

7.43. SU UCL response provides evidence on membership levels of Student Central obtained via a freedom of information (FOI) request. In SU UCL’s view, this membership evidence indicates 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”. The SU UCL response goes on to advise that “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”. It is noted that the FOI membership figures do not have a category for ‘members of public’.

FOIA - Student Central Usage

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Total membership	15,000	15,000	17,000	19,000	15,500	**	**
Members (staff and students)	10,300	12,000	11,000	14,000	12,100	**	**
Sports and clubs	1,200	1,400	1,700	1,700	1,200	**	**
Gym and pool membership	3,000	3,300	1700*	1,700	3,000	**	**
Per day access	3,000	3,000	3,000	3,000	3,000	**	**

\* Pool closure periods for refurbishment for 2016-17

\*\* Pandemic impact

7.44. The above figures are addressed in the Statutory Declaration of Mr Harwood. This makes the point that the ‘Per day access’ figures are “clearly average figures (given the consistent number provided across all years)”. All the figures appear to be either rounded up or down to the nearest 100 or perhaps in the case of ‘Total membership’ to the nearest 500 or 1000.

- 7.45. Stephen Harwood has confirmed that SC operated a membership system whereby students and staff of UoL colleges were able to obtain free membership granting them “access to the majority of the ancillary facilities within the Building (such as the bars, canteen etc.)”. Mr Harwood has also confirmed that a small percentage of Associate Memberships were also made available to students from other non-UoL HE establishments within London. Mr Harwood believes “these memberships would have accounted for the difference between the "Total Membership" figure and the "Members (Staff and Students)" figure in the FOI data”.
- 7.46. SU UCL’s suggestion regarding the number of members of the public that had membership (3000 to 6000 people) appears to be derived from the difference between the ‘Total Membership’ figure and the ‘Members (Staff and Students)’ figure in the FOI data. Given that Stephen Harwood has explained that this is due to Associate Memberships his statutory declaration goes on to state that “No private (i.e. non-student / staff) memberships were available for the Building and therefore UCLU’s suggestion that between 3,000 and 6,000 memberships were held by members of the public is incorrect”. The screenshot from the website for Student Central (Enclosure 12 of the applicant’s PCN response) confirms that there were no memberships offered to members of the public.
- 7.47. Stephen Harwood also confirms that the entrance to the application site was installed with an infra red counter which monitored the number of attendees and believes “this would have informed the "Per Day Access" figures in the FOI Data”. While it was known how many people visited the application site each day, Mr Harwood confirms “there was no system for recording who attended the Building (e.g. students/staff etc) and the use of different parts of the Building by students/non-students was not monitored”.
- 7.48. The SU UCL response states that 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 the café, bars and sports facilities being used by the local community. While this may have been the case for the café and bars at certain times, it is agreed by all parties that Energy Base required membership for entry to the gym, pool and sports facilities. Evidence has also been provided that some of the rooms on the upper floors required access cards. While private memberships were available to members of the public, the paper records for 2019 indicate that only 2% of the memberships were held by private members for that year. For the same year, the electronic records indicate that there were 118 non-student memberships (approx. 3%) out of a total 3642 memberships.
- 7.49. The screenshot from the website for Student Central (Enclosure 12 of the applicant’s PCN response) confirms that SC membership provided the benefit of allowing entry to the bars and function rooms after 6:30pm.
- 7.50. In addition, the statutory declaration states that Stephen Harwood “understood that the entrance to the bar areas was usually manned by security who would request to see student ID passes on entry”. He also understood that while some guests were permitted entry, “the primary clientele would have been students”.
- 7.51. Definition of the planning unit

- 7.52. The judgment *Burdle & Williams v SOS and New Forest RDC* 1972 provides the seminal guidance on the identification of the correct planning unit for the purposes of assessing whether the use made of land is lawful. As a general guide the 'unit of occupation' should be considered the appropriate planning unit unless some smaller unit can be distinguished both physically and functionally. The judgement includes the following:
- 7.53. *What, then, are the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out some broad categories of distinction.*
- 7.54. *First, 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. That proposition emerges clearly from G. Percy Trentham Ltd. v. Gloucestershire County Council [1966] 1 W.L.R. 506 , where Diplock L.J. said, at p. 513:*
- 7.55. *"What is the unit which the local authority are entitled to look at and deal with in an enforcement notice for the purpose of determining whether or not there has been a 'material change in the use of any buildings or other land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."*
- 7.56. *But, secondly, 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.*
- 7.57. *Thirdly, however, 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.*
- 7.58. *To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. 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*

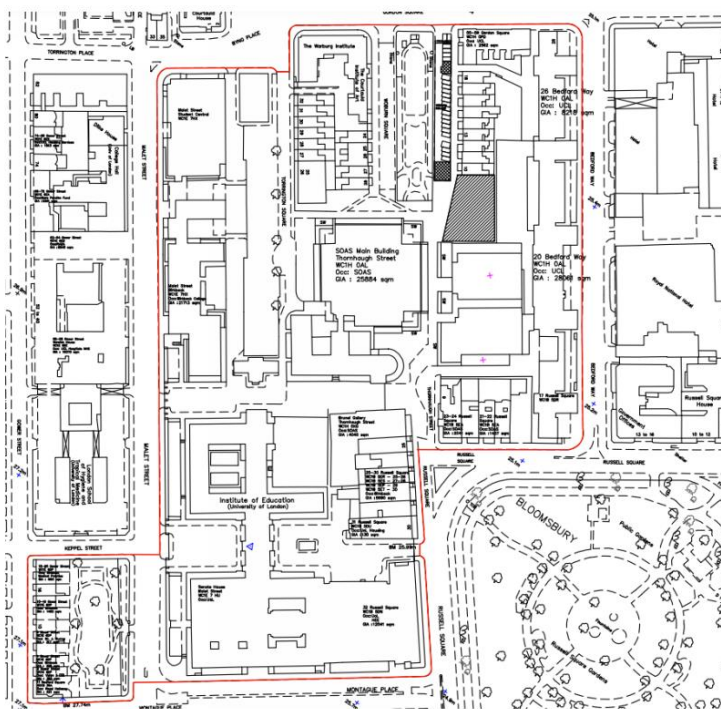
*activities which amount in substance to a separate use both physically and functionally.*

- 7.59. Is there a single main purpose of the occupier's use of the application site to which secondary activities are incidental or ancillary?
- 7.60. The primary uses of land often embrace one or more ancillary activities. The focus of planning control is on the primary uses of the planning unit rather than ancillary uses. The concept of the planning unit is judge made but correct identification of the planning unit is an essential step in determining the lawfulness of a given use.
- 7.61. The judgment as whether a use is ancillary to another, or not, is one of fact and degree and thus case sensitive. It depends on whether the use is "mainly connected" with the operation of the primary use and not on the proportion or size of that use taking place within the planning unit. A use which is unrelated to another use in the planning unit is not ancillary or incidental to that use. It would therefore be erroneous to treat a use as ancillary to a primary use merely because that use is relatively small (*Main v Secretary of State for the Environment* (1999) 77 P. & C.R. 300).
- 7.62. *Applicant's argument in relation to the main use and ancillary uses*
- 7.63. The applicant asserts that the existing use of the application site is for F1 educational use with all other uses carried out at the Property being ancillary to that primary use. The applicant states that whilst uses such as a café and a gym, swimming pool and sports hall operated on the site, these are ancillary to the primary use as an educational institution and do not comprise separate planning units. While they were open to members of the public, their primary use was to serve students as an ancillary function of the building's wider use.
- 7.64. The applicant's PCN response states that the auditorium space is ancillary to the primary F1 educational use and that the bar cafeteria and auditorium have been predominantly used by students throughout the lifetime of the property. The PCN response gives further specific detail on the use of the auditorium and states that it was also regularly used for educational purposes including (but not limited to) being used for teaching and hosting exams. The applicant's contention is that the "ancillary student bar, cafeteria and auditorium space" are all spaces "consistently found within F1 buildings" (paragraph 3.5.5 of the Pinsent Masons letter in support of the CLEUD application).
- 7.65. The applicant's submission also states that the supporting student facilities and supporting office space are ancillary to this primary educational use. This is further confirmed in the applicant's PCN response which states that "the authorised use of the Property is for F1 educational use with ancillary office, leisure, retail and food and drink uses typically found in buildings used for that purpose". Their submission also confirms that the student services on the ground floor (including reception, retail, coffee shop and office space) were ancillary to the wider educational use of the building.
- 7.66. The applicant's case is also based on quantum of floorspace for the different uses within the building and states that "The predominant use of our Site, in

comparison, is for teaching and learning – this floorspace occupies more floorspace within the building than any other land use”.

- 7.67. The applicant’s evidence also draws attention to the LB Camden letter to SU UCL dated 15<sup>th</sup> May 2023 confirming its position that the primary use of the Property is “F1 educational with ancillary office, leisure, retail and food and drink uses typically found in educational buildings”.
- 7.68. The letter from Pinsent Masons in support of the CLEUD application, whilst arguing that the other uses in the application site were ancillary to the authorised use of Class F1, also puts forward a slightly different argument relating to the broad scope of the Class F1 definition. It concludes that the “PCN Response and supporting evidence demonstrates that the authorised use of the Property is for F1 educational use including ancillary office, leisure, retail and food and drink uses typically found in buildings used for such purpose. Class F1(a) covers “any use for the provision of education”. The activities within the Property fall within the broad scope of this definition.”
- 7.69. *SU UCL’s argument in relation to the main use and ancillary uses*
- 7.70. SU UCL state that “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”.
- 7.71. “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 “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 the “second to fourth floors of the Property”.
- 7.72. They also state “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” (para. 61 of the SU UCL formal response). This contradicts their analysis in paragraph 55 of their formal response which states that the building contains a mix of uses which are functionally interlinked.
- 7.73. Their formal response explains the reasoning for their finding that there was no functional link between the leisure and retail facilities taking place on the lower ground, ground and first floors, and any educational use taking place. It states:
- 7.74. “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”.
- 7.75. *Officer assessment in relation to the main use and ancillary uses*

- 7.76. The building is accessed by a primary entrance on Malet Street and has a central core with a lift and stairs from which most floors can be accessed, with access to the second floor mezzanine provided by two subsidiary stair cores that also run the whole length of the building. Users are able to move freely between the floors as required, although some of the rooms (for example the careers' service) previously had access control requiring students to swipe their access cards. Energy Base required membership for entry to the gym, pool and sports facilities and it is understood that the entrance to the bar areas "was usually manned by security who would request to see student ID passes on entry".
- 7.77. The application site could be considered to be part of the wider University of London planning unit. Evidence provided by the applicant states the No 1 Estate (in which the Site is located) is held by University of London (UoL) under a freehold title which is registered at the Land Registry under title number 325806. The No 1 Estate (also known as the Precinct) is shown edged in red on the below plan.



- 7.78. It could be argued that the UoL Precinct forms a campus occupied by Senate House, UoL Union Building (i.e. the application site) and Higher Education institutions which are federated to the UoL including Birkbeck, SOAS, UCL Institute of Education and The Warburg Institute. Several of these buildings (Senate House, Union Building and The Warburg Institute) were designed by the architect Charles Holden from the 1930s onwards. The primary use of the campus would be for the provision of education.
- 7.79. However, all of the uses which have been identified within the wider Precinct are essentially physically and functionally separate, occupied by different educational institutions. Crucially, the application site can be recognised as the site of activities which amount in substance to a separate use both physically and functionally from other neighbouring buildings, including those owned by the University of London. While there is some functional linkage between the site and the uses within the Precinct, with the site providing facilities for students at the Precinct's educational institutions, the application site served a much wider

catchment of students including the main UCL Bloomsbury campus to the north as well as students from other UoL federated HE institutions beyond. Physically it is separated by public roads from these other HE institutions and it is not part of a coherent whole university campus that is all in the same occupation. As such, it is considered consistent with Burdle that the Union Building is the planning unit.

- 7.80. This accords with the finding in *Church Commissioners for England v Secretary of State for the Environment* 1996. In this case, it was held that a shop in the Metro Centre in Gateshead (a complex housing shops, restaurants, a cinema etc) constituted the planning unit rather than the Metro Centre complex when considering whether a change of use would be material. The unit was occupied by an individual trader. The Court upheld this decision, as being entirely consistent with the "working rule" in *Burdle* (J 133), that the unit of occupation should be assumed to be the appropriate planning unit.
- 7.81. Consideration must also be given to whether, within the single unit of occupation, separate planning units can be distinguished. The text from *Burdle* is provided below:
- 7.82. *"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"*.
- 7.83. The building has a primary entrance which provides access to all floors: none of the uses within the building has its own separate entrance at street level. The basement and lower ground floor provided leisure facilities (swimming pool, sports hall and gym), the first floor provided a student bar, cafeteria, and auditorium space, the second and third were primarily used for teaching and conferencing purposes and the ground and fourth floor provided student services (including housing, careers and print services). While used for different purposes, these uses were not unrelated rather they all provided services primarily to visiting students.
- 7.84. "Education" use is not further defined in the relevant legislation. The Council is not aware of any case law which considers the interpretation of the words "for the provision of education" in the Use Classes Order. However, whether a use falls within this class is a question of fact (*Ipswich Borough Council v Fairview Hotels (Ipswich) Limited* [2022] EWHC 2868 (KB) at para.72). There is no basis in the Use Classes Order for adopting a very narrow interpretation of educational use, limited to (for example) formal classroom teaching. The SU UCL response argues that the swimming pool, gym and sports hall, cafes and bars were not used for teaching or instruction and therefore their use could not be educational. Officers do not agree with this approach as it is unduly restrictive. It is considered that education use can go beyond the use of space for formal classroom teaching and is apt to cover the other non-academic educational uses which have occurred in the application site, for example student societies, rehearsal and performance space, areas for meeting and socialising, careers advice services and leisure and sports facilities. This is particularly the case for higher education, where the experience of attending university – as a whole – is part of obtaining a university education.



- 7.85. It is considered that in principle, all the uses that were taking place in the application site prior to lockdown were capable of falling within the scope of an F1 use, either as an educational use or as ancillary to that use. However, that does not mean that in the present case, the building must automatically fall within an F1 use. Whether it does depends on how in practice the application site has been used and whether there is another main use which has resulted in the building having a mixed or composite use overall.
- 7.86. While the auditorium was used for concerts open to members of the public, this use was not extensive and Stephen Hardwood's statutory declaration estimated "an average of around 10 music concerts per year took place in the auditorium, with that number potentially doubling during successful periods." The scale and intensity of the auditorium use for concerts suggests that this use was subservient to a larger 'provision of education' in the application site. It is also noted that the PCN stated that this space was also regularly used for educational purposes including being used for teaching and hosting exams.
- 7.87. The basement and lower ground floor provided leisure facilities and were open to members of the public and SU UCL have advised that the pool was used by Out to Swim (twice weekly) and British Naturism (weekly). The evidence regarding the use of the leisure facilities has been assessed in paragraphs 7.10 to 7.20. The assessment concluded that the very small percentage of private members, supports the broad statement in the statutory declaration that "The leisure facilities on the basement and lower ground floors were also predominantly used by students". The evidence of usage by organisations such as Out to Swim and British Naturism does not in of itself undermine the evidence that the leisure facilities were predominantly used by students. Therefore, the leisure use of the pool by members of the community and non-student organisations is considered to be subordinate to the predominant use of the pool by students.
- 7.88. Likewise, the use of the café, bars and auditorium by members of the public is considered to be subservient to their predominant use by students. This is similar to the case of *Young v Oxford CC [2010] EWHC 3337 (Admin)* which involved the university campus of Oxford Brookes which included a colonnade of retail units. The High Court considered that it was evident from a consideration of the grant of planning permission and the associated section 106 agreement that the use of a university campus, considered as a whole, was for the purposes of education. Retail units provided for in part of the campus were ancillary to that use, particularly so given their relatively small size, and the fact they were particularly aimed at the requirements of students using the education facilities of an integrated campus. While the planning unit in *Young* was the campus whereas the 'Student Central' building is acknowledged to be the planning unit in this case, the judgement nevertheless has relevance. In *Young* the judgement found that the fact that members of the public would be entitled to use these facilities for buying books, visiting the bank or patronising the cafés did not alter this ancillary status of the use since members of the university community would predominate.
- 7.89. **Conclusion**
- 7.90. The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance

of probability”, and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

- 7.91. The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the application site has been in use for the provision of education and that this use began more than ten years before the date of this application (04/08/2023) and has continued throughout the relevant 10 year period.
  - 7.92. Furthermore, the Council’s evidence and the evidence provided by SU UCL does not undermine the applicant’s version of events that the building was used for the provision of education and was used predominantly by students. As stated above, education use can go beyond the use of space for formal classroom teaching and can cover the other non-academic educational uses which have occurred at the application site such as performance space, areas for meeting and socialising, student services and leisure and sports facilities.
- 8. Recommendation: Grant lawful development certificate with description as set out below.**
- 8.1. Use of the property for educational purposes (Use Class F1).