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Dear Sir

**81 BELSIZE PARK GARDENS
PLANNING APPLICATION 2020/4338/P**

We refer to our letter dated 4 February 2021 in this matter and your email dated 8 February 2021.

We enclose a copy of the Tenancy at Will. It is dated 21 May 2019 and it commenced on that date. However, it has no fixed term and is determinable by the landlord at any time.

With regard to the owner's intentions, we should clarify that from prior to the date on which Springhealth Leisure Centre ceased trading until 29 January 2021, the Property was owned by U and I Investments (UK) Limited and that from 29 January to the present time the Property is owned by Land & Site Acquisitions Limited.

Against this background, we note from your email that three pre-application enquiries and one planning application has been made in relation to the Property since Springhealth Leisure Centre ceased trading.

We have not seen details of the three pre-application enquires or any advice that was obtained in relation to them. However, we understand that none of the enquiries or the planning application was made by the freehold owner of the Property during their tenure.

In addition, we note that the planning application 2020/0929/P submitted on 5 June 2020 (made by the third party (Mr Randhawa)) was withdrawn before it was determined.

We understand that all three pre-application enquiries and the planning application were made by prospective purchasers of the Property who were evidently interested to explore the potential future use of the Property and the likelihood that planning permission could be obtained for that use.

A number of things stand out about this:

1. As the enquiries and application were made by third parties, they do not represent or evidence any intention on the part of the owner;

2. As we understand from your email, all three enquiries and the planning application were made on the understanding that the existing, lawful use of the Property is as a gym/leisure centre consistent with the owner's marketing particulars;
3. None of the three enquires resulted in a planning application and the only planning application that was made was subsequently withdrawn. None was carried through to determination and none resulted in planning permission.

In this context, the principal fact remains that the building has not been altered, it is still fitted out as a gym and has been marketed as such by the owner throughout the relevant period.

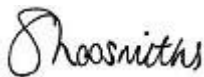
In general terms, it is quite reasonable for a prospective purchaser and (indeed) a prudent owner to consider options for the future use and development of property - even where the property is in beneficial occupation. However, in such circumstances, the owner's intentions for the Property may not change until all the options are known and a plan is decided upon. In that respect, a pre-application request that did not result in a planning application is at best evidence of "considering options" and not a change of intention.

In our view, this situation is distinguishable from the facts in *Hartley*. In actual fact, in that case, very little turned on the Owner's intention. However, on the facts, the owner (Mrs Fisher) stated in evidence to an inquiry she "would not let her son sell cars" from the land during the relevant period. Accordingly, there was a deliberate decision that the land should not be used in that way. In contrast, in this case, the owner (as landlord to the former tenant) has made no such decision and has, in fact, taken steps to market the property for use as a leisure centre with the intention that it would be used in that way.

The evidence of the owner's intention in this case is therefore more closely aligned with that in *Hughes* and other cases where the owner expressed an intention that the property should recommence at some point in the future. In *Hughes* it was held that such intention should be taken into account as evidence that the use has not been abandoned, albeit the weight given to the evidence must be balanced against the three other relevant factors of the physical condition of the building, the period of non-use and whether there has been any other use. Of course, in the present case, the Property remains in a good physical condition, fitted out as a leisure centre and is therefore consistent with the evidence of the owner's intention from the marketing particulars.

Please let us know if we can be of any further assistance in this matter.

Yours faithfully



SHOOSMITHS LLP