

THIRD PARTY NOTIFICATION TO THE OFFICE FOR STUDENTS

IMPERIAL COLLEGE LONDON – QUESTIONS OVER THE COLLEGE’S LEGAL POWERS AND VIRES TO UNDERTAKE MAJOR COMMERCIAL DEVELOPMENTS WITH NO ACADEMIC OR UNIVERSITY CONTENT

We are asking the Office for Students to exercise its regulatory powers to investigate and confirm **whether Imperial College London is acting within its Statute and Objects, in undertaking property development projects which appear to us to fall outside its lawful powers.**

We are asking for what may prove to be a swift and simple exercise in providing the public with reassurance that the College is operating lawfully. We appreciate that the Office for Students takes a risk-based approach to intervention, and we hope that we have correctly understood the limitations on OfS powers to intervene.

As a local organisation, we are a neighbourhood forum designated by the Old Oak and Park Royal Development Corporation in 2018. Our membership is made up of 65 members living within the neighbourhood boundary and a further 70 in the surrounding part of West London.

We fully understand that OfS does not handle ‘complaints’. We are not making a complaint nor seeking any redress beyond independent confirmation that Imperial College is acting within its lawful powers. We see this as a matter of public interest which needs to be checked, given the unexpected and prolonged reluctance of Imperial College to provide an adequate answer to our questions.

In relation to the OfS Conditions of Registration, our concerns relate to the following two main conditions D4 and EII and EVI :

Condition D4 Have the necessary financial resources to continue to comply with all conditions of its registration.

We are not qualified to comment on the College’s overall financial position. Our concern is whether the College is 100% confident of its assertions that its current property development activities fall within its legal powers. Were such confidence to prove misplaced and certain of its development activities to be challenged through the courts, the financial consequences of unravelling obligations and agreements entered into could derail the finances of the university.

Condition E

EII. Accountability: The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.

EVI. Value for money: The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers

Our neighbourhood forum, and its sister body in North Kensington, has had dealings with Imperial College over planning issues since 2010. It has become increasingly hard to accept that the College meets the wording of this Registration Condition E, in relation to its activities on property development.

Given that the College is an exempt charity and in receipt of public funds, levels of transparency fall far short of what would normally be expected of a public body.

With our most recent email to the College's Chief Operating Officer (of 10th September 2022) we enclosed a draft version of the 'chronology' of our correspondence with the College over the past year. This chronology forms part of this third party notification. We asked for a response within 14 days, and have received nothing (as of 4th October 2022).

We feel that we have gone the extra mile in trying to raise concerns with the College authorities, before making this notification to the Office for Students.

The background to our concerns

Repeated inquiries of the College on the subject of its development activity have brought no substantive response. The major project involved (at [One Portal Way, North Acton](#)) involves 7 commercial and residential buildings to be constructed over a decade or more.

The current proposals are the subject of a [planning application](#) submitted to the Old Oak and Park Royal Development Corporation in November 2021, but which has yet to be determined. The planning issues involved are not relevant to this third party notification to the OfS. The proposals at issue involve a very major commercial project with no academic or university content. This 'investment' project is being progressed by the College's Endowment Board with a selected development partner [Frame Re.](#)

In two brief responses, detailed in the chronology below, the College has insisted that it has the legal powers and capacity in relation to its 'non-core assets' *to invest these funds as it sees fit, including in land and property.*

We have been referred to the College's 1907 Royal Charter and 2007 [Supplemental Charter and the College Ordinances](#). When we have questioned the College's interpretation of these, we have not been given answers.

The College's original Charter and Statutes dates from 1907. A supplemental Charter came into force in 2007 and established the College as a University with the name and style of "The Imperial College of Science, Technology and Medicine". This version incorporates amendments made on 6 July 2009, 16 March 2011 and 5 November 2014.

The 'objects' of the College are at 4 of the [College's Charter](#). Clause 5 then sets out various powers which are available to further these objects, listed from a) to k). Those at the sub-clauses below are relevant to Imperial's activities on property development:

*Clause 5. The University, subject to this Our Charter and Statutes, shall have **power to do any lawful thing in furtherance of its objects** and, without prejudice to the generality of the foregoing, shall have power:*

(c) to acquire, own, maintain, manage and dispose of real and other property; (d) to solicit, receive and administer grants, fees, subscriptions, donations, endowments, legacies, gifts and loans of any property whatsoever, whether real or personal; (e) to act as trustees for and in relation to endowments, legacies and gifts

*(f) to invest any monies in the hands of the University and available for investment **in accordance with the relevant law and the Statutes;***

*(h) to join or collaborate with any other institution, organisation, company, partnership, joint venture or association having in view or promoting any activity the same as, or similar or related to, or which can provide a service for, any activity of the University **as provided for by law, by the provisions of***

this Our Charter, and in such manner as may be authorised by Statutes, Ordinances and Regulations of the University, and to delegate or revoke delegation of any of the University's functions to individuals, boards, committees or other entities (comprising its own officers or members or otherwise) with a view to furthering any of the above collaborative purpose or purposes;

(k) generally to do all other lawful acts whatsoever that may be necessary for and conducive or incidental to the attainment of the objects of the University.

While these powers are widely drawn, they are not unlimited. The overriding qualification in the first sentence is that *'any lawful thing'* needs to relate to the *'furtherance of the objects'* of the College. The final catch-all clause (k) includes the words *'necessary for and conducive or incidental to the attainment of the objects of the university'*.

The 'conductive and incidental question'

Our concerns stem in part from how public law principles have been applied to the powers and vires of local authorities. Back in the late 1980s/early 1990s this same wording 'conductive and incidental' was used by several UK local authorities as a legal basis for using high risk and complex financial instruments (interest rate swaps) as a form of financial 'investment'. It was argued by several councils at the time that the relevant section 111 of the Local Government Act allowed for the use of such instruments as being 'conductive or incidental' to the statutory objects and duties of a local authority.

[In 1989 It took a case which ended up with the House of Lords](#) to conclude that this was *not* the case, and that all transactions involved were ultra vires local authorities and hence null and void. Local government has since gained a 'power of general competence' which has changed the legal position.

We note that a number of universities have similar wording on 'conductive and incidental' activities in their statutes and charters. Hence we see the OfS view on the interpretation of this wording as being a matter of wider public interest than in relation to Imperial College alone

Many universities now engage in providing student and/or staff housing as part of an investment portfolio. Oxford and Cambridge universities have made use of their extensive landholding for centuries. Cambridge University is currently undertaking a series of major projects involving a combination of business parks, research facilities and residential development.

Eddington and the wider [North West Cambridge Development](#) is one such example. But we note that this project *includes 1,500 homes for University and College staff, accommodation for 2,000 postgraduates, and 100,000 sq/m of academic and research and development space of which up to 40% may be private research with University connection or Research Institutes.*

Imperial's own campus at White City, developed since 2012, involves a mix of academic, research, and administrative buildings along with student housing. We accept that this development can be defined as 'conductive and incidental' to the objects of the University, albeit that current changes to the masterplan involve replacing a proposed administrative building with a block of 213 'studio units' with no link to the College.

We note the wording above on the North West Cambridge Development, which refers to *'academic and research and development space of which up to 40% may be private research with University connection or Research Institutes'*. Does this 40% figure reflect legal advice taken by the University

on limitations within its own charter and objects, as to what level of purely commercial property development is permissible within a development?

We find it hard to believe that there no legal limit whatsoever to the powers of a university to move into the sphere of large-scale urban development? Can such activity extend to building entire new towns and roads or railways? These are not the core functions of a university in receipt of public funds to deliver academic outcomes.

If the answer to this question is ‘there is no limit whatsoever’ we do not understand why Imperial College has proved so reluctant to provide evidence to this effect. If it is a question of degree and proportion, in combining university-related along with purely commercial elements within a development, we question how Imperial’s proposals at One Portal Way fit within such limitations?

In correspondence with the College, we have also been referred to College Ordinance F1. This sets out the role and terms of reference of the College’s Endowment Board. The College has also established (in 2021) a [Property Committee](#) (see at Annexe C below).

Whatever wording is used to define the powers and responsibilities of these bodies, these powers (as delegated from the College Council) cannot exceed the statutes, charter and objects of the College as a corporate body. Delegated powers cannot go beyond the powers of the body making the delegation.

The [Endowment Board](#) is charged with *managing the Non-Core Assets in a manner that is appropriate to achieve the investment and distribution objective determined by the Endowment Board and approved by the Council from time to time (the “Investment Objective”)*. We have found a Statement of Investment Principles on the College website, but this relates to administration of the Pension Fund.

In any event we do not see that the Endowment Board can operate other than within the objects of the College. We suggest that this requires a focus on (and interpretation of) the wording ‘conducive or incidental’ in Object 5 in the College Charter.

One Portal Way, North Acton

Imperial College purchased this site from Crosstree Real Estate Partners in 2017. The initial intention (as we understand) was to add to the College’s complement of student housing at North Acton.

The [consultation website](#) on the Imperial project notes *The site has an existing planning consent for a new 32 storey residential building, granted in 2016, however the area has changed a lot in the last five years and Imperial is considering new development proposals to better reflect the current and future needs of Ealing, North Acton and local people.*

Frame RE has been selected by Imperial as their Development Manager to work with architects Pilbrow & Partners to create a new vision.

Details of the proposed development are summarised at paragraph 9 of a GLA Stage 1 report of 29th July 2021 as follows:

The applicant is proposing a hybrid scheme comprising the comprehensive redevelopment of the site to create a mixed-use development that includes a new public park, sport and community uses, food and beverage floorspace, culture and leisure, employment floorspace including co-working and residential including co-living. Buildings will vary in height and include a 56 storey tower and two 51 storey towers. In terms of quantum of development, the proposal includes up to 1400 residential

units including Build to Rent, between 17,000sqm and 20,000sqm of flexible commercial and community space, up to 350 co-living units and a hotel of up to 12,000sqm (250 rooms). The total floor area is expected to be between 157,000 to 165,000sqm GIA.

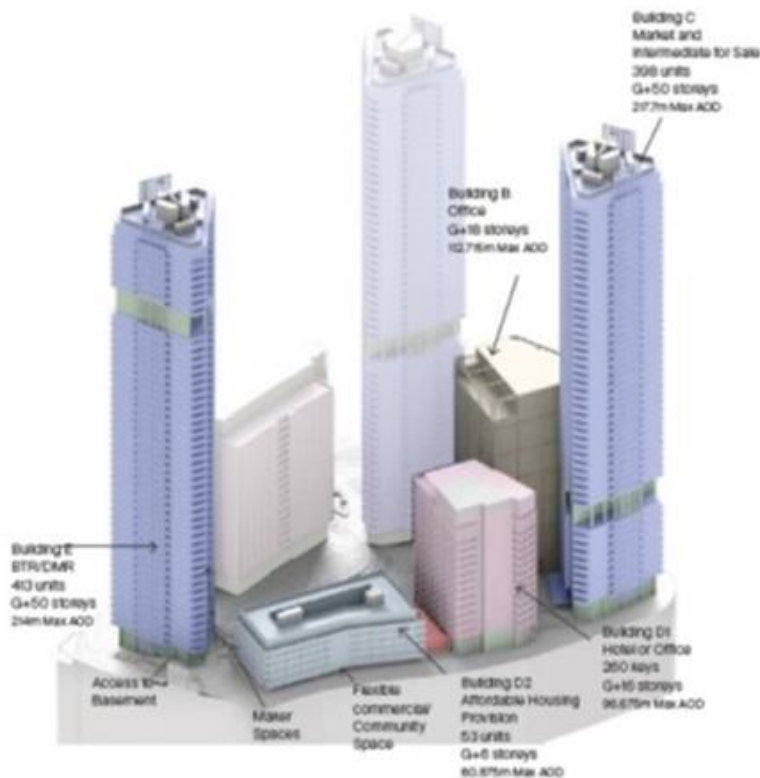
The Planning Statement accompanying the One Portal Way application states at 2.19 *Imperial's increased presence in North Acton forms part of a logical expansion of its reach in West London, closely connected to its medical teaching and research campus at Hammersmith Hospital, and is only two tube stops away from its innovation district in White City.*

We fail to see a why wholly commercial development at One Portal Way is a logical extension of the university's reach in West London. What does spatial 'reach' mean in a university context? It is true that Imperial NHS Trust has a hospital in nearby north Hammersmith. But does the College's link with this NHS Health Trust have any legal effect in widening the range of activities which the College itself can lawfully undertake under its own statute, charter and objects?

A hybrid application is proposed with detailed elements comprising the first phase of construction and outline for later phases.

Outline phases will be defined by spatial parameters, design codes and land use parameters.

It is intended that an element of flexibility be built into part of these later phases to allow the masterplan to respond to changing future market conditions.



The Office for Student approach to financial risk entered into by HE bodies

We recognise that a number of UK universities are running with substantial budget deficits resulting from the pandemic lockdown. There seems to be little clarity on what happens in the event of a university going into liquidation. The assumption is that some form of government support or bailout would be forthcoming. Hence the public interest in OfS being able to clarify the scope of financial activities which are legitimately '*conducive and incidental to*' to the statutory objects of a university. We see Imperial's One Portal Way development as a very high risk and speculative development in a period of uncertainty in the London property market.

It may be that the College's Endowment Board intend to de-risk the project by selling on the site and planning consent, or by leasing several of the buildings when built. If so, we question the appropriateness of higher education bodies in making use of their academic reputation to ease the passage of a purely commercial planning application, when the sole objective is financial gain?

Charity law

We also find it hard to understand how such development activity is compatible with the College's status as an exempt charity? As we understand, while charities can 'trade' and gain non-charitable returns (through e.g. commercial research partnerships) such activity can be undertaken on a substantial and continuing basis only if the trade is part of carrying out its main charitable aims (what is called *primary purpose trading* for tax purposes) and that a charity may not carry on a substantial ongoing non-charitable trade.

Imperial College Strategy 2020-25

In a section of 'Enablers' [this document](#) states *We will strengthen and diversify our revenues Delivering our mission requires investment in our staff, students and facilities. Financial sustainability is essential to ensuring that we are able to maintain and develop a world-class research and education environment and have the flexibility to invest in the opportunities of our choice.*

ACTIONS IN DETAIL

- *We will dedicate over one-third of the space at our White City Campus to diversifying our income.*
- *We will continue to seek philanthropic investment to strengthen our strategic priorities, and continue to grow our cash income.*
- *We will manage the College Endowment to generate a steady return and continue to grow the number of endowed scholarships, professorships and chairs.*

We have reviewed such information as the College publish on the actions and decisions of the College's Endowment Board and its [Property Committee](#). Minutes of meetings of these bodies no longer seem to be published on the College website (as was the case in the past). We have queried this change (see item 13 in the chronology of correspondence below). Information available to the public on the activities and decisions of these two College bodies is therefore very limited.

Conclusions

We ask the OfS to look into the question of the legal powers and vires of Imperial College, and the actions and decisions of the College's Endowment Board, in relation to the project at One Portal Way.

We are concerned that the February 2021 decision of the College Council to set up a Property Committee to develop a longterm real estate strategy, and to provide strategic oversight of the College's property portfolios, including its commercial portfolio may have been made without full

legal advice as to the scope and extent of direct property development activity that would remain within the College's objects, and therefore lawful.

We do not consider that the College is currently meeting OfS Conditions of Registration EII and EVI. Insufficient transparency is being provided on the activities and decisions of the Endowment Board. In terms of basic governance, the persistent refusal to respond to information requests, over the period of a year, does not meet the standards expected of any public body let alone a major university.

While the membership of the Endowment Board may have substantial expertise in the world of property and development, this body may have strayed unwittingly into areas of activity which go beyond the legal powers of the College. Quality of advice from senior management is critical in this respect.

We are aware that the College over the past year has seen the departure of its former President Alice P Gast, and its former Chief Financial Officer Muir Stevenson. Imperial has recognised the need for changes to its organisational culture.

The College states *We will empower society through meaningful engagement and dialogue*. Our members living in and around North Acton and White City are not currently experiencing any such 'meaningful engagement'. We look to the Office for Students to ensure the College at least answers letters in future.

Overleaf

Annexe A - Chronology of correspondence between Old Oak Neighbourhood Forum and Imperial College

Annexe B – note attached to OONF letter sent on 21st January 2022 on questions of vires

Annexe C – Extract from minutes of College Council 12 February 2021

ANNEXE A CHRONOLOGY OF RELEVANT CORRESPONDENCE BETWEEN THE OLD OAK NEIGHBOURHOOD FORUM AND IMPERIAL COLLEGE

1. OONF letter to Imperial (Alice Sewell, Strategic Manager) of 10th September 2021.

This set out a series of questions on the One Portal Way project including:

- 2. Are there any reports available to the public explaining the basis on which the College decided that its Endowment Fund should embark on what appears to be a purely commercial development at One Portal Way, with no academic content (unlike the scenario at Wood Lane)?*
- 3. Are there any statutory limits on the vires or powers of the College to engage in commercial property development activities, through its Endowment Fund or otherwise, in such a scenario?*
- 4. Where does such activity fit within the College's Charter granted in 1907 or Supplemental Charter granted in 2007? I have read the section on the College website which explains that the College has the power to do any lawful thing in furtherance of its objectives, including engaging in property matters. But this ends by saying the College may generally to do all other lawful acts whatsoever that may be necessary for and conducive or incidental to the attainment of the University's objects.*

This OONF letter explained that relevant background to these queries was the experience of legal cases on the vires of local authorities, on which it was found that terminology of 'conducive or incidental' was not unlimited..

2. Response of Alice Sewell to OONF 29 September 2021

Sewell, Alice (a.sewell@imperial.ac.uk) To:you + 2 more Details

Dear Henry,

Thank you for your letter, dated 10th September, regarding 1 Portal Way.

I hope the response from the London Communication Agency of 6th July, in relation to your earlier comments regarding our White City campus was helpful; I have attached the correspondence for your records. Turning to your questions on 1 Portal Way specifically:

Imperial, as owner of 1 Portal Way, reviews and approves the materials issued by the London Communications Agency.

In terms of your three questions relating to the Endowment fund's governance and investment activities; [College Ordinance F1](#) sets out the terms of reference for the Endowment. The Endowment manages funds that are available for investment, known as "Non-Core Assets", and has full authority from the College Council to invest these funds as it sees fit, including in land and property. The income and capital return generated by the Endowment supports the College's academic mission. Further detail on the Endowment is publicly available on the College [website](#).

Kind regards,

Alice

Alice Sewell MRICS Strategic Manager | Investment Property Office | Imperial College London | Scale Space | 58 Wood Lane | London | W12 7RZ |

3. Further letter from OONF to Alice Sewell of November 16 2021 including content as below

“Going back to the subject of the College’s powers and vires, I had looked at the material on the College’s website, including the Ordinance relating to the Endowment, before contacting you about Imperial’s involvement in the project at 1 Portal Way. The first paragraph of the Ordinance states the College, subject to the Charter and Statutes, has the power to invest any monies in the hands of the College and available for investment in accordance with the relevant law and the Statutes.

The Ordinance, as you say, grants wide delegated powers to the Investment Board. These are defined at 4a as *‘Manage the Non-Core Assets that have been transferred to the Endowment as it sees fit, including placing monies on deposit with any bank or licensed deposit taker or by investing in such stocks, funds, shares, securities and other investments (including land and any tenure or any interest therein) of whatsoever nature and wheresoever and whether involving liability or not, as the Endowment Board shall, in its absolute discretion, think fit’.*

It would be helpful to know what are the relevant laws and statutes which govern how higher education bodies established by Royal Charter can undertake ‘investments’? But I expect you will tell me that it is up to me to find out?

I hope the College’s legal advisers have explored these matters in depth. Local authorities in the past have been badly caught out in assuming that they have powers to carry out certain financial transactions, viewed at the time as ‘investments’, but which have turned out to be ultra vires.

No response was received to this letter.

4. 16 January 2022 OONF letter to Alice Sewell, Imperial College Strategic Manager

This letter from OONF included the following section on the College’s objects and vires

“We have corresponded before on the College’s legal capacity to undertake a purely commercial property development, of the kind proposed at One Portal Way, via the College Endowment. Your email of 29th September 2021 referred me to College Ordinance F1 and advised that *‘The Endowment manages funds that are available for investment, known as “Non-Core Assets”, and has full authority from the College Council to invest these funds as it sees fit, including in land and property. The income and capital return generated by the Endowment supports the College’s academic mission’.* The note attached to this letter questions whether the College’s Charter, Statute and Objects can be interpreted so widely as to allow for any form of investment activity, however unrelated this might be to the ‘objects’ of the university. I leave these questions with you and copy addressees”.

The note attached to this OONF letter of 16 January explored this question in more detail. A copy is included as Annexe B below.

5. Imperial Alice Sewell email to OONF of 10 February 2022

Contents of this email as below:

Dear Henry,

Thank you for taking the time to comment on our application on behalf of the Old Oak Neighbourhood Forum.

We have considered the detailed comments raised by the Old Oak Neighbourhood Forum and will shortly make a joint response to all matters raised in the consultation period.

In my reply of 29th September 2021, I answered your queries on the Endowment's governance and signposted you to the relevant College ordinances and the Endowment's website. We do not have anything further to add on this matter.

Kind regards,

Alice

Alice Sewell MRICS

Strategic Manager | Investment Property Office | Imperial College London | Scale Space | 58 Wood Lane | London | W12 7RZ |

6. OONF email to Imperial (Alice Sewell) of 11th February 2022 with content including the following:

"If the College is fully confident that the activities of the Endowment Board in pursuing the proposals for One Portal Way fall within the powers and vires of the College, why are you or your colleagues not willing to provide further information on this subject? At our Forum's February meeting there was continued concern as to why a university is undertaking a very major property development of the kind contained in this planning application, and whether it is within the legal capacity of the College to do so?"

Below are a series of extracts from the April 2020 Guide for Members of Governing Bodies of Universities and Colleges in England, Wales and Northern Ireland. As questioned below, we do not see how College's responses to our questions are compatible with the guide. Nor do we find material in this guide that covers the lawfulness of commercial property development activity way beyond the needs of the estate of a university.

1.1 Institutions of higher education are legally independent corporate institutions which have a common purpose of providing teaching and undertaking research.

1.2 In the case of the pre-1992 universities, the constitution and powers of the governing body are laid down in, and limited by, the charter and statutes of the institution.

1.4 Governing bodies are entrusted with funds, both public and private, and therefore have a particular duty to observe the highest standards of corporate governance. This includes ensuring and demonstrating integrity and objectivity in the transaction of their business, and wherever possible following a policy of openness and transparency in the dissemination of their decisions.

These parts of the guide we understand. As explained in my letter of 16th January, we have studied the College's Charter, Statutes and Ordinances and understand that Imperial is a 'pre 1992' university and a 'legally independent corporate institution' for which these documents define its governance arrangements. But as we have pointed out, the content of these documents contain some limitations and does not mean that the College has powers to do anything that it wishes.

On the basis of responses to date to our queries, we do not see evidence of openness and transparency in the dissemination of decisions".

There was no response to this email.

7. Email of 23 May 2022 from OONF to Grainne Brankin, College Secretary and Counsel

Content of this email included the following:

“The responses from Alice Sewell did not answer the questions in our letter of 16th January 2022 (attached). She then closed the correspondence by stating *In my reply of 29th September 2021, I answered your queries on the Endowment’s governance and signposted you to the relevant College ordinances and the Endowment’s website.* **We do not have anything further to add on this matter.**

Her email and our further email response of 11th February are attached. Our 11th February email went unanswered. **It includes questions on the College’s powers to undertake this development project which we feel deserve a proper response from a university body supposedly committed to openness and transparency.**

Our January 16th letter was copied to Alice P Gast and to Muir Sanderson. We understand that both these individuals are leaving their positions at the College this summer. We are familiar with the background to these departures. We understand that there is to be a change of institutional culture at the College, to address a “perceived problem of power being centred in two or three individuals at the College and the exclusion from the decision-making process of those who should be included in the interest of good governance”. We have no idea whether our previous questions have been communicated to College Council members or to those on the Endowment Board.

We are asking that the College reconsider the concerns that we have raised over the proposals for One Portal Way. We have read through with care such information on the scheme as is available from the minutes of the College’s Endowment Board.

In very summarised form (expanded on in earlier correspondence) our concerns are twofold:

- We question whether it can be the case that the wording of the College’s statute and charter places no limitations whatsoever on activities that can lawfully be undertaken by Imperial in the name of ‘investment’ (given a scope defined as generally to do all other lawful acts whatsoever that may be necessary for and conducive or incidental to the attainment of the objects of the University). ‘Conducive and incidental’ are terms with legal history on their interpretation in a public law context.

This email received no acknowledgement or reply. It was copied to Alice Sewell and to John Anderson, Director of Financial Strategy at the College.

8. Email of 21 June 2022 To Grainne Brankin, College Secretary and Counsel

This email pointed out the lack of a response or acknowledgement to the previous email of 23 May. It also queried why no minutes of College Council meetings had been published on the Imperial website since those for a 17 September 2021 meeting.

This email received no acknowledgment or reply.

9. OONF email to Martyn Boutelle, Associate Provost (Estates Planning) at Imperial College of 4 August 2022

This email included content as below. It was copied to the following.

president@imperial.ac.uk president@imperial.ac.uk, **j.anderson@imperial.ac.uk** j.anderson@imper

ial.ac.uk, a.sewell@imperial.ac.uk a.sewell@imperial.ac.uk, g.brankin@imperial.ac.uk g.brankin@imperial.ac.uk

“Dear Mr Boutelle,

I am contacting you as the Associate Provost (Estates Planning). Below is a series of emails sent to Grainne Brankin since May 2022, to which I have received neither an acknowledgment nor reply. These were copied to John Anderson and to Emma Sewell.

The questions that I have asked (on behalf of the Old Oak Neighbourhood Forum) are serious ones. It seems extraordinary that a university as renowned as Imperial sees it as acceptable to ignore information requests about the activities of its Endowment Board. Copies of previous letters are also attached”.

No acknowledgement or reply was received to this email.

10. OONF email to Imperial Martyn Boutelle of 16 August 2022

This was a follow up email including the content below:

“It is now 12 days since I sent to you the email below. I have been trying since May 2022 to gain some answers to questions about the role of the College in the proposed development at One Portal Way, North Acton.

For three months now, I have received no reply - nor even an acknowledgement - to my requests. If the College is intent in not responding to these queries, please confirm this position and I will pursue matters through other channels. My questions are set out in the email of May 23rd at the foot of this sequence of earlier emails.

This email was copied to the following:

president@imperial.ac.uk president@imperial.ac.uk, j.anderson@imperial.ac.uk j.anderson@imperial.ac.uk, g.brankin@imperial.ac.uk g.brankin@imperial.ac.uk, a.sewell@imperial.ac.uk.

11. Imperial Central Secretariat email response to OONF of 26 August 2022

This brief response, following three unsuccessful efforts to obtain any form of reply, is shown in full below:

From: central.secretariat@imperial.ac.uk,

To: henrypeterson@aol.com,

Subject: FAO Mr Peterson

Date: Fri, 26 Aug 2022 18:43

By email to henrypeterson@aol.com

Dear Mr Peterson,

We refer to your correspondence with Imperial College over the last year, the most recent of which being your email of 16 August 2022 to Professor Boutelle.

Ms Alice Sewell on behalf of the College responded to your letter of 10 September 2021 on 29 September 2021 and to your letter of 16 January 2022 on 10 February 2022. Ms Sewell further addressed questions raised in your letter from 16 November 2021 in her email to you on 30 November 2021. The College also submitted a consultation response to the OPDC on 30 May 2022 with the comments raised by the Old Oak Neighbouring Forum and others having been reviewed and addressed, where possible in the covering letter, Design and Access Statement (DAS) addendum and updated design code.

Delivering the College's mission requires ongoing investment in staff, students and facilities over the long term and the College has an obligation to ensure its financial sustainability, including holding investments in property and/or other assets. All monies generated by the College are applied to further the College's aims and for the benefit of its stakeholders.

The College is aware that the Old Oak Neighbourhood Forum has various concerns about the planning proposal for 1 Portal Way, but these should continue to be directed to the OPDC's planning officers so that they are considered as part of the public consultation process.

Records of the College's Council meetings are published on the College's website when prepared and approved for publication.

Kind Regards,

Imperial College London
Central Secretariat

12. OONF to Imperial (Professor Martyn Boutelle) of 30 August 2022

This email (in full) reads as below:

From: henrypeterson@aol.com,
To: m.boutelle@imperial.ac.uk, g.brarkin@imperial.ac.uk, a.sewell@imperial.ac.uk, j.anderson@imperial.ac.uk,
CC: markjonathonwalker@gmail.com,
BCC: jenniferdawnrobinson@gmail.com, hayescanal@hotmail.co.uk, johncox321@aol.com,
Subject: Imperial College's legal powers in respect to development proposals at One Portal Way North Acton
Date: Tue, 30 Aug 2022 23:32

"Dear Mr Boutelle,

This email response below of 26th August from 'Central Secretariat Team' is a wholly inadequate reply to the series of emails which I have sent to the College since May 2022. It is unsurprising (and unacceptable) that no named person has been willing to sign it off.

I am well aware of the reply sent to me by Alice Sewell on 11th February 2022. This said in my reply of 29th September 2021, *I answered your queries on the Endowment's governance and signposted*

you to the relevant College ordinances and the Endowment's website. We do not have anything further to add on this matter.

Subsequently I have explained in detail in successive emails that I have reviewed the material on College governance in the 'relevant ordinances and the Endowment's website'. This content has not answered concerns as to whether the College is acting within its legal powers in its pursuit of a major commercial development at One Portal Way, North Acton.

Unless the College provides within 14 days a more substantive response, I will be pursuing the concerns of the Old Oak Neighbourhood Forum with the Office for Students, as the regulatory body for higher education institutions.

In our view, the College is failing to meet the continuing requirements for registration, as set out in Condition E2 the OfS regulatory framework, in terms of expected behaviours on governance and transparency. The College has proved unwilling or unable to reply to reasonable questions on the legal interpretation of its powers.

We continue to question whether requirements in Condition D are being met, in terms of the risks that the College is taking on in its speculative property developments.

As raised back in January 2022, the College's 2007 charter and statute do not leave the institution wholly unconstrained as to its lawful powers. We have questioned the scope of the wording in the statute at paragraph 5, extracts from which read:

5. The University, subject to this Our Charter and Statutes, shall have power to do any lawful thing in furtherance of its objects and, without prejudice to the generality of the foregoing, shall have power:

5(c) to acquire, own, maintain, manage and dispose of real and other property

5(k) generally to do all other lawful acts whatsoever that may be necessary for and conducive or incidental to the attainment of the objects of the University.

As we have explained, we as yet are unconvinced that the College's project at One Portal Way falls within the definition of 'necessary for and conducive and incidental' to the objects of the university as defined in paragraph 4. These are *The Objects of the University shall be to provide the highest specialised instruction and the most advanced training, education, research and scholarship in science, technology and medicine, especially in their application to industry; and in pursuit of these objects to act in co-operation with other bodies.*

We consider that there are legitimate public interest questions to be asked of the College, in terms of the financial risks that it may be taking on as a result of its involvement in this proposed development.

Secondly we consider the College's role in a development of the type proposed, with three residential towers above 50 storeys, to be contrary to (rather than 'conducive or incidental to') the College's statutory objective of 'providing the most advanced training, education, research and scholarship in science, technology and medicine, especially in their application to industry'.

This building typology is alien to what the College promotes in terms of its activities on sustainability and climate change.

We do not understand why the College has proved so reluctant to provide an adequate and reasoned explanation in response to our queries.

It seems unnecessary for us to have to pursue these matters with the OfS. But we will if this proves necessary. This matter could be simply resolved by a fuller response to the questions we have been raising since the start of 2022, including an explanation of the legal advice that the College has taken on these issues.

The brief email of 26th August sent to us said that we should raise our concerns on planning issues with OPDC as the relevant planning authority. We have submitted two sets of objections to date to the planning application 21/0181/OUTOPDC, and will be submitting a third in light of the latest DLUHC circular on fire safety in very tall buildings.

So can we please have a more substantive response that is signed off by yourself as Associate Provost (Estates Planning), or by Acting Chief Financial Officer Tony Lawrence, or by the College Secretary Grainne Brankin. We would also be grateful for confirmation that our correspondence has been referred to the Chair of the College's Endowment Board whom we understand to be Christopher Williams.

Regards, Henry Peterson OBE, Adviser to the Old Oak Neighbourhood Forum”

No response to this email was received to this email.

13. Email to Imperial College's Chief Operating Officer of 10th September 2022

This is copied in full below. As mentioned in the email it appears that the College no longer publishes minutes of its Endowment Board, Audit and Risk Committee, or Property Committee (whereas it did in the past). We question whether this practice meets OfS registration requirement EII.

(henrypeterson@aol.com)To:a.wolthuizen@imperial.ac.uk + 7 more Details

Chronology for OFS Draft.Sept ...pdf (293 KB)

Dear Ms Wolthuizen,

I understand that you are the Director of Public Affairs and Chief of Staff at the College. I am hoping that you may be able to help on the matters below.

On behalf of the Old Oak Neighbourhood Forum, I have been corresponding with a series of College staff on the subject of the College's powers to undertake major commercial development projects via its Endowment.

The College's scheme at One Portal Way, North Acton, has been the focus of these questions on the College's statutes, objects and ordinances. A further and recent development proposal at Site A on the College's White City campus raises the same issues.

Most of our letters and emails to the College have neither been acknowledged nor answered. On two occasions over the past year, we have been given brief responses (one from Alice Sewell, Strategic Manager, and one from an unnamed person in the Central Secretariat). These responses have not addressed the questions that we have asked.

In our most recent email to Professor Boutelle, I explained that we will be referring a record of these exchanges to the Office for Students as an annexe to a 'third party notification'. If the College is not willing to give an adequate explanation of its own interpretation of the extent of the College's lawful powers to engage in commercial development, we hope that the OfS will provide an independent view - given that this is a wider issue potentially affecting many universities.

We do not believe that the scope for such commercial development activity by the College is wholly unrestricted, and can be continuous, even if viewed by the institution as a form of 'investment'.

We may be wrong, and that the College has taken extensive legal advice on the manner in which the Endowment Board and Property Committee have pursued new initiatives in recent years. If this is so, we do not see why such advice cannot be made public?

We will also be raising with the OfS whether the College is meeting all requirements for condition E2 of continuing registration. Over the decade in which I have had dealing with the College on its development activities, there has been a noticeable reduction in the amount of information which the College has been willing to publish in terms of agendas, reports and minutes.

On the College website at present, I am not finding copies of minutes or papers for the Endowment Board, the Audit and Risk Committee, Property Committee (or any other committees). Minutes of these bodies used to be published. We have pointed out previously that the most recent set of published Council minutes is from a 17 September 2021 meeting. If these types of documents have been transferred to a different part of the website, please let me know.

We consider that these changes to availability of minutes may have reached the stage which trigger OfS indicators of non-compliance (*reports to or minutes of decision making bodies are perfunctory, or designate extensive material as confidential without adequate reason*).

A decade ago College Council papers and reports were published as well as minutes, except where there were justifiable grounds for exemption. It has proved impossible to find documentation which sets out why the College chose to develop its site at One Portal Way as a wholly commercial proposition, how Frame Re were chosen as a partner, and what assessment was made of the risks in such a major decade-long project? Who or which body made the decision to proceed with this venture?

The chronology of correspondence which would accompany our notification has been prepared in draft form. A copy is attached. Much of the correspondence was sent to or copied to Grainne Rankin, as College Secretary and Counsel, but she has made no response.

My most recent email to Professor Boutelle said that we would be making a notification to OfS if we had no substantive response to our questions within 14 days. This time period has now passed.

I am contacting you in the hope that such a referral could prove unnecessary. I am very willing to meet with you and/or other colleagues, to discuss what legal advice the College has taken to support its view that its commercial development activities are 'conducive or incidental' to the objects of the university.

The questions we have asked are serious ones, based on experience that public authorities do not always realise that they are exceeding their powers until too late. If you are willing to read the attached chronology, I hope you will accept that the College's responses to a group of concerned local residents have (so far) fallen well short of what would be expected from a university of global renown

Regards,

Henry Peterson OBE
Adviser to the Old Oak Neighbourhood Forum

No response to this email has been received as of 4th October 2022.

ANNEXE B (a note as included with the 16 January 2022 letter from Old Oak Neighbourhood Forum to Alice Sewell at Imperial College, item 4 on the chronology above).

Questions on the College's legal capacity to pursue speculative property development as part of the investment strategy of the College Endowment

Our understanding of the law is that the objects clause of an incorporated body such as the College establishes the lawful powers (vires) of the body beyond which it is not legally entitled to go. It must act *intra vires* and is not permitted to act outside its objects clause.

The powers of a body corporate in its objects clause are to be distinguished from the powers of its directors and agents which emerge from express or implied powers contained elsewhere within the constitutional documentation. The powers of the agents must be exercised within the vires of the body corporate and cannot permit the agents to exceed what is permitted by the objects clause.

The statute of the College defines its objects at sub **paragraph 4 of its Charter** as below

The Objects of the University shall be to provide the highest specialised instruction and the most advanced training, education research and scholarship in science, technology and medicine, especially in their application to industry; and in pursuit of these objects to act in co-operation with other bodies.

Sub paragraph 5 states *The University, subject to this Our Charter and Statutes, shall have power to do any lawful thing in furtherance of its objects and, without prejudice to the generality of the foregoing, shall have power:* (followed by a list of a series of activities).

The wording 'subject to' and 'in furtherance of its objects' is surely important? The vires and lawful powers of the College, as with other corporate bodies, are not wholly unlimited.

Of the activities defined in the statute, the following are relevant:

(c) to acquire, own, maintain, manage and dispose of real and other property;

(f) to invest any monies in the hands of the University and available for investment in accordance with the relevant law and the Statutes;

(k) generally to do all other lawful acts whatsoever that may be necessary for and conducive or incidental to the attainment of the objects of the University.

The terminology of 'conducive or incidental' features in many versions of documents that determine the powers and vires of a public body, charity or corporate body. Similar wording applies to the powers and vires of Non Departmental Public Bodies. Interpretation has been the subject of much case law over the years.

In relation to local government, Section 111 of the Local Government Act 1972 gave local authorities the power to do anything "*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*". In using this power, authorities would need to identify which of their functions an activity was 'incidental' to. Case law limited the degree to which functions could be justified on the basis that they were incidental to activities that were themselves incidental to local authorities' lawful powers and functions.

Following a number of legal cases where the extent of S111 was disputed, the Government introduced a general power of competence (GPC) for local authorities. This was brought into force on 18 February 2012.

We accept that universities operate under a different legal framework to local government and NDPBs. But (subject to the College providing evidence to the contrary) we believe that the same basic public law principles apply. We do not see how a university, including Imperial College, could lawfully engage in activities that are entirely remote from the 'objects' in its charter or statute.

Hence we argue that c) above (*to acquire, own, maintain, manage and dispose of real and other property*) should be interpreted as relating back to the College's objects. This would cover e.g. the provision of academic buildings, administrative buildings, and student housing.

Activity f) above (*to invest any monies in the hands of the University and available for investment in accordance with the relevant law and the Statutes*) appears at first sight to be wide-ranging and without limits. But this wording includes the qualifier '*in accordance with the relevant law and statutes*'.

Would it be lawful for the College to 'invest' by acquiring crypto currency, speculating via interest rate swaps, betting on horse races, or building and managing casinos? What limits on forms of investment has the College set itself? Does the Endowment take legal advice on what is permissible and what might be ultra vires in terms of investment in direct property development, as having no link to the College's 'objects'? If so we would welcome sight of a copy of such advice.

Old Oak Neighbourhood Forum
January 2022

ANNEXE C

Extract from Imperial Council minutes of 12th February 2021

MATTERS FOR DECISION Property Committee

10. The President presented the paper, which proposed replacing the White City Syndicate with a Property Committee which would expand the remit beyond White City to all College estates outside the Endowment. The Committee would work with the Estates Strategy Group, a committee of the President's Board, to develop a longterm real estate strategy, and would provide strategic oversight of the College's property portfolios, including its commercial portfolio.

11. The Chair of the White City Syndicate, Mr Toby Courtauld, would chair the Property Committee. He explained that whilst the new Committee would not take decisions, like the Syndicate it would consider strategy, capital and income to gain a better understanding of relevant risks. The terms of reference would, subject to Council approval, be adjusted if necessary as the Committee embedded into the governance structure. It was anticipated that the proposed Committee would have an overlap in attendance with the Finance Committee in order to consider the financial aspects of property decisions. Candidates were actively being sought to strengthen the Property Committee's membership.

12. The Committee would balance a number of strategic needs, including sustainability, social responsibility, and the needs of staff, students and the local community, as well as commercial return. Academic space prioritisation would continue to be driven by the Provost's Board, which fed into the Estates Strategy Group. The subcommittee structure provided a mechanism for stakeholders, including students, to input into decisions. This would build on the positive experience of working together on the Covid response.

13. A short summary of real estate governance was being drafted to set out where decisions were being made. Resolved: That the Property Committee Terms of Reference, as set out in Appendix A, be approved, with the President of the Students Union always welcome to attend, and subject to edits from the Chair of the Committee.

Resolved: *That the Property Committee Terms of Reference, as set out in Appendix A, be approved, with the President of the Students Union always welcome to attend, and subject to edits from the Chair of the Committee.*