DELEGATED APPLICATIONS ASSESSMENT SHEET

APPLICATION NO./ADDRESS: United Reformed Church, Shelley Road

DATE OF SITE VISIT: 1.10.09

NEIGHBOURS CHECKED: Y

ADDITIONAL NEIGHBOUR NOTIFICATIONS: N

PROPOSAL, SITE AND SURROUNDINGS:

The application relates to a vacant building, formerly used as a Church, located on the south side of Shelley Road on the east side of its junction with Buckingham Road. As initially submitted a Certificate of Lawfulness is sought for the proposed use of the building as a polyclinic.

The buildings comprise an imposing red brick building under a plain clay tiled pitched roof dating from 1902. The internal accommodation comprises the main nave (with balcony), a church hall and various administration rooms on the ground and first-floor. To the south east of the main church building is a fenced off area occupied by temporary building dating from circa. 1980. To the east of this is a car park accessed from Grafton Road. There is a gated pedestrian access leading from the car park running between the rear (south) of the main church building and the north side of the temporary building, leading to a footpath running along the north side 14 Buckingham Road to Buckingham Road. The footpath to the north side of 14 Buckingham Road is not included within the red lined area of the application site (although the applicant apparently has a pedestrian right of way over it).

The current application seeks to establish that it would be lawful to use the building as a polyclinic within Class D1 of the Town and Country Planning Use Classes Order 1987. There would be no external alterations. Indicative internal plans submitted with the application show the ground floor sub-divided to provide 10 consulting rooms together with the use of existing first-floor accommodation and the creation of additional floor space filling the voids of the main nave and church hall to enable a further 24 consulting rooms and a conference room on the first and second floors. Ancillary uses would include offices and ancillary retail (pharmacy) and the existing private car park.

Information submitted in support of the application states:-

The use of the church clearly falls within the definition of a D1 Use Class as outlined by the Town and Country Planning (Use Classes Order) 1987 (as amended) ~~e d~~

The United Reform [sic] Church has been used as a place of worship up until 2005 when the congregation moved to St Columbas Church in St Michaels Road (renamed Emmanuel United Reformed Church. The use of the church

clearly falls within the definition of a D1 use as outlined by the Town & Country Planning (Use Classes) Order 1987 (as amended).

From 1999 onwards much of the first-floor of the church was used by the New Montessori Pre-School also classed as a D1 Use. The school moved out in 2006 to the Methodist Church in Tarring Road. The building has since been empty.

Part D of the Town and Country Planning Use Classes Order 1987 (as amended) outlines those uses falling within Class D1 Non-residential Institutions as:-

Any use not including a residential use –
a) for the **provision of any medical or health service** except the use of premises attached to the residence of the consultant or practitioner,
b) as a crèche, day nursery or day centre,
c) for the provision of education,
d) for the display of works of art (otherwise than for the sale or hire),
e) as a museum,
f) as a public library or public reading room,
g) as a public hall or exhibition hall,
h) for, or in connection with, public worship or religious instruction.

It is argued the proposed polyclinic use – as a medical facility – does not involve a material change of use of the building. There are no operational works, and therefore, planning permission is not required. The applicant cites relevant case law as *Carpet Décor (Guildford) Ltd v SoS and Guildford BC (1981), Brooks and Burton v SoS (1977)* and *Eastleigh BC v First SoS and Asda Stores (2004).*

RELEVANT PLANNING HISTORY:

The church dates from 1902, there are various planning records relating to minor extensions and external alterations. There is no formal record of the use by the New Montessori Pre-school (although play equipment and paraphernalia left in the building would support this claim).

There are several records relating to a temporary sectional scout hut building located at the rear of the site dating from 1948. A single-storey sectional building for youth organisational meetings in connection with the church and replacing the scout hut was granted temporary permission in 1980 (875/80 refers). This was renewed and granted a permanent permission in 1990 (90/0571 refers). Condition 1 of that permission states that:-

1. The building shall be used for activities ancillary to the United Reformed Church and for no other purpose including any other purpose within Class D1 of the Town and Country Planning)Use Classes) Order 1987 without the written consent of the Local Planning Authority.

RELEVANT PLANNING POLICIES:

None – The planning merits of the proposal are not to be considered.

REPRESENTATIONS:

There is no statutory obligation to consult an application for a Certificate of Lawful Development for a Proposed Use under S.192. However, occupiers of properties adjoining the site have been notified and the application publicised in the local press. No site notice was displayed.

Representations have been received from residents of Chandos Road, Salisbury Road, Graham Road, Buckingham Road, and The Worthing Society expressing concerns about:-

- impact of the proposed use on residential amenity (noise and disturbance, overlooking, safety and security, extended hours of use)
- proposed use out of character in residential area,
- parking and traffic generation (heavy vehicles, deliveries, refuse collection, lack of parking worsen congestion),
- anti-social behaviour of clientele (drugs and alcohol based),
- proposal amounts to a mini out-patient hospital,
- pharmacy not a legitimate D1 use,
- intensification of ancillary use of car park not within a D1 use,
- lack of sufficient precise details of the activity proposed,
- lack of reference to proposed use of pre-fabricated building at rear,
- views of NHS should be sought,
- effect on doctors surgeries in the vicinity should be considered,
- proof should be sought that the proposed enterprise is viable.

PLANNING ASSESSMENT:

The consideration is related solely to matters of evidence and law. The planning merits of the application are not relevant to the determination of this application.

Circular 10/97 'Enforcing Planning Control' (8.26) - S.192 (of the Act) provides that if the LPA are supplied with information satisfying them that the use or operation described in the application would be lawful, if instituted or begun at the time of the application they shall issue a certificate to that effect. The burden of proof is firmly on the applicant. He will have to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal and to submit whatever supporting information or legal submission he wishes to satisfy the LPA that an LDC should be granted. Where a change of use is involved it will be necessary to describe the present, or last use of the land and where the lawfulness of that use is being relied upon to pave the way to implementing the proposed use, provide sufficient information to satisfy the LPA of the lawfulness of the existing use.

In this case, the last use of the building as a church within Class D1 of the Town and Country Planning (Use Classes) Order (as amended) is not disputed. The car park has been used in connection with the primary use of

the building as a church. Evidence submitted by the applicant supports the claim that the New Montessori Pre-school used part of the building until 2006. This education use would also have fallen with a Class D1 usage.

However, the use of the single-storey sectional building is restricted by condition to activities ancillary to the United Reformed Church and for no other purpose including any other purpose within Class D1. **The applicant has therefore amended the application by submitting an amended site plan outlining the sectional building in blue to be omitted from this application.**

Section 55(1) defines 'development' as "the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land."

Section 55(2) provides:- "The following operations or uses of land shall not be taken for purposes of this act to involve the development of the land:-

(a) The carrying out for the maintenance, improvement or other alteration of any building or works which:
(1) affect only the interior of the building;
(2) do not materially affect the appearance of the building.

As originally submitted, indicative plans submitted with the application showed the provision of first and second floors within the church and a first-floor within the church hall. The creation of a mezzanine may not constitute development under the provisions of S.55(2)(a) and (b), but the applicant has not sought a determination on this aspect of the proposals. The plans that have been submitted are indicative only. This aside it was considered that the provision of second-floor within the church and first floor accommodation within the church hall would not be practically feasible without necessitating external alterations to provide natural light and ventilation constituting development. [A part first-floor balcony/mezzanine exists in the main church.]

The applicant has amended the application by deleting the second-floor accommodation over the church and amending the first-floor over the church hall to provide only storage. The applicant was unwilling to delete the proposed indicative floor plans from the application.

(f) In the case of buildings or other land which are used for purposes of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land subject to the provisions of the order of any part of the building or other land, for any other purpose of the same class.

The Use Classes Orders have been made under that provision and the Use Classes Order 1987 stipulates:-

"Subject to the provisions of this Order where a building or other land is used for a purpose of any class specified in the schedule, the use of that building or that land for any other purpose of the same class shall not be taken to involve the development of the land."

Established case law [*Brookes and Burton v SoS and another, 1977*] finds that "once a use falls within a class in the Use Classes Order then the carrying out of any developments which do not change that use, in the sense that it remains in the same class, could not be regarded as development which is unlawful".

And that:-

"Once one came within a Use Class it was possible to use the relevant unit in any of the ways which fell within the purposes of that class. The effect is that intensification whether or not it amounts to a material change of use, can never be enforced against provided it has not changed the use within the relevant class,"

The relevant unit in this case is the building and car park but excluding the sectional building and the land on which it sits. The relevant consideration is whether the proposed use as a polyclinic constitutes a Non-residential Institution falling within Class D1 of the Town & Country Planning Use Classes Order 1987 (as amended). Non residential institutions class together buildings visited by the public for a wide range of purposes on a non residential basis.

The term 'polyclinic' has become commonplace since used in 2008 by the Health Minister Lord Darzi in his recommendations following the review of the NHS, and is taken to mean a provision which houses a broad range of health care facilities, with GPs alongside other health professionals, including provision of diagnostic and therapeutic facilities, all under the same roof. Polyclinics are largely being promoted in urban areas particularly London where there have been a number of development proposals progressed. More locally, there is a polyclinic in Nevill Avenue in Hove (held by B&HCC to fall within Class D1 of the T&C Planning UCO). There appears to be no specific case law relating to the term 'polyclinic', but it is clear from the range of facilities shown on the indicative floor plans that these would essentially be health-related. The only exceptions would be the optician and pharmacy which by themselves would be retail uses (Class A1), and possibly the laboratory (by itself, within Class B1), but clearly are health-related, and in view of the small floor areas indicated, would be ancillary to the primary use or purpose of the building as a health care facility (in the same way that a pharmacy at a hospital is ancillary to the primary use).

However, for the sake of clarity and to avoid any ambiguity or misunderstanding over terminology, the applicant has agreed to change the description to 'health centre' with the understanding that the following proposed uses are depicted on the submitted plans:

- **Medical Consulting rooms**
- **Dentistry**
- **Optician**
- **Podiatry**
- **Alternative therapy**

- **Operating theatres**
- **Laboratory**
- **X-ray**
- **Ultrasound**
- **Physiotherapy**
- **Ancillary pharmacy**
- **Ancillary office space**
- **Ancillary reception and waiting areas**
- **Ancillary storage space**
- **Ancillary car park**

Importantly, the relevant test of the evidence is the 'balance of probability' and not the stricter criminal burden of proof 'beyond reasonable doubt'. Moreover, the advice in Circular 10/97 makes it clear that the LPA should proceed on the basis that neither the identity of the applicant, nor the planning merits of the operation, use or activity are relevant to the consideration of the purely legal issues which are involved in determining an application.

RECOMMENDATION:

Issue Certificate of Lawfulness for the proposed use of the building and land outlined in red, and excluding the land hatched in blue on the plan, as a health centre comprising medical consulting rooms (including dentistry, podiatry, alternative therapies), operating theatre(s), x-ray, ultrasound, physiotherapy with ancillary optician, ancillary pharmacy, ancillary office space, ancillary laboratory, ancillary reception and waiting areas, ancillary storage space and ancillary car park within Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

IS RECOMMENDATION CONTRARY TO LETTER (S) OF REPRESENTATION?

Yes

DELEGATED

Case Office[redacted]
Sign.....Date.....9.11.09

Authorising Officer
Sign.....[redacted].....Date.....9.11.09