

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

**Application No :** 13/00631/PLUD

**Ward:**  
Farnborough And Crofton

**Address :** Summercroft Surgery Starts Hill Road  
Orpington BR6 7AR

**OS Grid Ref:** E: 543461 N: 165202

**Applicant :** Summercroft Surgery

**Objections :** YES

**Description of Development:**

Use of building as a GP Surgery (Class D1) with ancillary dispensing pharmacy.  
CERTIFICATE OF LAWFULNESS FOR A PROPOSED USE.

Key designations:

Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
Local Distributor Roads

**Proposal**

A Certificate of Lawfulness for a Proposed Use is sought in relation to the provision of a pharmacy within the existing GP surgery. This is described as being ancillary to the primary surgery use. It would be situated within part of the existing ground floor area.

This application has been submitted following an earlier application for a Certificate of Lawfulness involving an identical proposal, ref. 12/03640, which was refused by the Council, and is now the subject of an on-going appeal (with the Inspector site visited scheduled for 24th June and the Appeal Decision expected to be issued some time shortly afterwards). Although the application is identical, this application is accompanied by a Counsel's opinion which has been commissioned on behalf of the applicant. That Counsel's opinion was not provided with the earlier application but has been given to the appeal Inspector for consideration in the appeal.

Various points set out in the Counsel's opinion are set out below:

- the question is whether the introduction of a pharmacy leads to a mixed D1 and A1 (retail) use, or whether the pharmacy would be ancillary to that existing D1 use;

- whether a proposed use is ancillary to a principal use, or gives rise to a material change of use, is highly fact sensitive
- whether the proposals would give rise to a material change of use; or whether the use would be ancillary to the primary D1 use
- physical features are of note [in considering this proposal]
- principal purpose of the pharmacy would be to dispense prescription medicines... although it may be appropriate for the pharmacy to keep a very limited supply of appropriate remedies... which are medicines that are available without prescription, to discharge the pharmacy's public service obligations
- pharmacy's hours of operation would likely be 6am to midnight Monday to Friday and 8am to 6pm on Saturdays (the surgery is open 8am to 6pm Monday to Friday)
- it is anticipated that 90% of the prescriptions dispensed would be the surgery's own patients
- [s.55 of the 1990 Planning Act is taken to mean that] uses of land which are ancillary to a lawful primary use, will not themselves require planning permission
- as the Court of Appeal emphasised in [Harrods Limited v. Secretary of State and the Royal Borough of Kensington & Chelsea [2002] EWCA Civ 412], what decision makers should focus on is whether the proposed use would give rise to a material change of use and therefore development within the meaning of s.55.
- would the introduction of the use amount to a material change in the use of the land or building?
- whether a change of use is material, is one of fact and degree
- whether there is a change in the character of the use- and off-site effects may be taken into account in drawing a conclusion about that
- the proposed pharmacy use would complement the medical centre use
- retail sales as may be provided... be at a de minimus level
- off-site effects would be limited
- highly improbable that there would be any real change to the character of the D1 use
- hours of operation... does not mean that the pharmacy use necessarily assumes a less subordinate function to the surgery use; it remains... complementary to the surgery

## **Location**

The application premises comprise a purpose-built doctors' surgery which fronts Starts Hill Road and which is situated approximately 40 metres south of its junction with Starts Close.

## **Comments from Local Residents**

A number of local representations have been received which can be summarised as follows:

- this is a material change of use which requires planning permission

- proposal is not ancillary to the surgery use
- building has only ever been used as a surgery
- no evidence to prove that 90% of the pharmacy patients will be surgery patients
- condition placed under previous planning permission to prevent an over-intensive use of the site due to limited parking on site
- hours of opening would attract non-surgery patients
- existing adequate provision of pharmacies in the area
- surgery is located in a residential area
- proposal will undermine existing local pharmacies
- concern at use of pharmacy for needle exchange and methadone distribution and associated anti-social behaviour
- inconceivable that a change of use will not occur as pharmacy will be open a lot longer than surgery hours of operation
- opening hours are excessive
- extended use and demand for surgery car park
- proposal is Class A1 retail and therefore requires planning permission

Additional comments have been submitted by the Local Pharmaceutical Committee objecting to the proposal. These state that dispensing services are not ancillary to the GP surgery but as a listed pharmacy on the register of NHS England. Under the terms of the regulations governing the proposed pharmacy, it would have to be open 100 hours per week and provide specific services. The proposal not to provide retail goods would result in the pharmacy being in breach of its terms of NHS services

The following comments have been raised by solicitors on behalf of Crofton Pharmacy:

- surgery has 12,000 patients and a limited number of parking spaces for use by patients.... addition of a pharmacy is likely to add further pressure and congestion in the immediate vicinity... Pharmacies also typically have several deliveries a day.
- surgery's normal opening hours are 55.5 hours per week. However it is proposed that the pharmacy will be open for 100 hours... query how this is not a material change of use.
- there does not appear to be any research undertaken to support the Counsel's opinion that 90% of the pharmacy's customers are "likely to be patients of the practice". It is anticipated that an out of hours pharmacy is likely to attract a substantial number of non-surgery customers and passing trade including the out of hours dispensing of medicines prescribed elsewhere... It will also attract other potential, less desirable, customers such as methadone users that specifically need an out of hours pharmacy and related services such as needle exchange. Serving such non-surgery customers during significantly extended opening hours is not ancillary or incidental to the existing surgery's use. This amounts to a new surgery/use.
- it is inevitable that the pharmacy would stock non-prescribed over-the-counter items, a fact which the Counsel for the applicant identifies. Anything

more than a de minimus level of such sales would amount to a retail use requiring Class A1 use.

It should be noted that comments relating to the planning merits of the application cannot be considered and this is made clear in the notification letters.

### **Comments from Consultees**

From a legal perspective, it is considered that the certificate should be granted.

### **Planning History**

The existing building was purpose built in the 1980s as a Doctor's surgery which was known as Summerlands. Planning permission was initially granted under planning application ref. 83/03171.

Under planning application ref. 93/01678 planning permission was granted for a single storey side extension to the Summerlands Surgery for a fundholding office and for no other purpose to prevent an overintensive use of the site in view of the limited on-site parking.

Under planning application ref. 98/03083, planning permission was granted for a single storey rear extension.

In 2010 the Summerlands surgery merged with Crofton Road surgery and formed the Summercroft Practice comprising 7 doctors and 4 nurses with 1 health care assistant, as well as reception staff. This surgery serves 12,000 people, both private and NHS patients. Under planning application ref. 10/01143 planning permission was sought for the installation of a lift, alterations to the fire door and car parking alterations. The on-site car park capacity had already increased from the 5 staff spaces and 13 patient spaces originally permitted to a general car park comprising 27 spaces. The new permitted parking arrangement comprised 30 on site spaces, including disabled parking spaces.

Under application ref. 12/03640, an application for a Certificate of Lawfulness for the use of the building as a GP Surgery (Class D1) with ancillary dispensing pharmacy was refused on the following ground:

"The proposal would not constitute an ancillary or incidental use to the existing surgery use and is considered to constitute development under Section 55 (1) of the Town And Country Planning Act 1990."

A copy of the report for the application ref.12/03640 is available on the application file. This application is now the subject of an appeal. Although the application was recommended for permission Members considered on balance that they could not support the recommendation.

### **Planning Considerations**

The application requires the Council to consider whether the proposed use would constitute development under s.55 of the Town And Country Planning Act.

## **Conclusions**

As Members will note, an identical application to this is currently the subject of an appeal. The report to Members for that application is attached.

In comparison to the previous submission (ref. 12/03640) this application includes a Counsel's opinion, details of which are summarised at the top of this report. The Council has also received a number of representations which raise additional arguments arguing against the notion that the proposed pharmacy will be ancillary to the existing surgery use.

There is evidence which both supports and contests the claim that the proposed use will be lawful and Members will need to carefully consider whether the proposal would give rise to a material change of use; or whether the use would be ancillary to the primary D1 use.

Background papers referred to during production of this report comprise all correspondence on files refs. 12/03640 and 13/00631, excluding exempt information.

## **RECOMMENDATION: CERTIFICATE BE GRANTED**

- 1 The proposed pharmacy is considered to be ancillary to the existing primary Class D1 surgery use of the premises and is not considered to constitute development under Section 55 (1) of the Town and Country Planning Act 1990.

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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