

**Supporting Statement to an
Application for a S 192 Determination
(Certificate of Lawful Proposed Use or Development)
Relating to a Proposed Use of The Smile Centre as a Care Facility for Patients
with a brain injury or neurological condition.**

Applicant – Caretech Community Services Ltd



**Aerial View of The Smile Centre and surrounding area
(courtesy of Google Maps)**

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Contents

- 1.0 Introduction**
- 2.0 The Legal Context and Provisions of S 192**
- 3.0 The Existing Property/Planning History**
- 4.0 The Use Proposed**
- 5.0 Consideration of whether there is a need for planning permission**

Documents Provided

Appendices

- Appendix 1 Copy of the Outline Planning Permission**
- Appendix 2 Copy of the Approval of Reserved Matters.**

Plans Provided

- Drwg 03 Rev C Site and Location Plans – 1:1250m and 1:500 at A3**
- Drwg 04 Rev C Existing and Proposed Parking Layout – 1:200 at A3**
- Drwg 01 Rev C Existing Layout Plan – 1:200 at A3**
- Drwg 02 Rev C Proposed Layout Plan – 1:200 at A3**

1.0 Introduction

- 1.1 This application relates to the property known as The Smile Centre, which was permitted as a Respite Centre in 2011 and has operated as a specialist care facility for disabled children and their families since soon after that date. This involves providing overnight accommodation to those in need of care, together with various support facilities. In planning terms this is a use within Use Class C2.
- 1.2 The Centre is situated within a predominantly residential area, with a boundary onto Eagle Avenue, but its main vehicular access from Hemlock Road. It shares its long northern boundary with the Rachel Madocks School.
- 1.3 The Centre has now been offered for sale and the prospective owners wish to continue the use of the site to provide a specialist care facility but in this case to accommodate patients in need of Neurological Rehabilitation. The new facility will provide residential care to patients affected by accident, illness or injury, with the aim of rehabilitating these people. This is also a use (in planning terms) within Use Class C2.
- 1.4 Legislation currently provides that planning permission is not required for changes from one activity within Class C2 to another use/activity within C2, but this application is being submitted to confirm this.
- 1.5 The new activities proposed will involve some minor internal rearrangement of space, in part to increase the number of beds that can be provided, together with some minor changes to the shell of the building itself. Details of these are included in the application details, so the LPA is invited to confirm that these details also do not need planning permission.
- 1.6 More details are shown within the following pages.

2.0 Legal Context

The Provisions of S 192

2.1 S 192 of the Planning Act provides a formal route whereby an applicant can ask the Local Planning Authority to determine whether or not development (including the proposed use of land or buildings) can be undertaken without the need for a planning application.

2.2 S 192 specifies:-

“192.-(1) If any person wishes to ascertain whether-

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over, or under land would be lawful, he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the Local Planning Authority is provided with information satisfying them that the use or operations 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;---”.

2.3 A proposed use of land may most commonly be lawful either because permission exists for that use, because the use would not involve a material change from its permitted use, or because a ‘change of use’ is permitted by a Development Order, such as the General Permitted Development Order.

The 1990 Act

2.4 Section 55 includes the definition of development, for which planning permission is needed, and clarifies this in sub-section 2) by a list of activities that are not development.

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

(a) – the carrying out for the maintenance, improvement or other alteration of any building of works which-

- (i) affect only the interior of the building, or
- (ii) do not materially affect the external appearance of the building,

(f) – in the case of buildings or other land which are used for a purpose of any class specified in any Order made by the Secretary of State under this section, the use of the buildings or other land - -for any other purpose of the same class;

The Use Classes Order (1987) (as amended)

2.5 Article 3 of the Order provides:-

3 (1) 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 other land for any other purpose of the same class shall not be taken to involve development of the land.

2.6. Hence, the purpose of the Order is to prescribe classes of development (as specified in S 55(2) (f)) within which any change is outside of planning control. Whilst not directly relevant here, it should be noted that the purpose of the Order is entirely 'permissive' such that changes that are outside of a class or between classes may or may not require permission. This will depend on whether the change is or is not material. If there has not been a material change then permission is not required even if a new use is within a different use class.

2.7 The following classes are mentioned in this Statement and refer to the definitions as set out in the Town and Country Use Classes Order 1987 (as amended).

2.8 **Class C2 Use for the provision of residential accommodation and care to people in need of care (other than within class C3 (dwelling houses). Use as a hospital or nursing home. Use as a residential school, college or training centre.**

3.0 The Existing Property/Planning History**The Smile Centre**

- 3.1 Planning permission was granted for what is now the Smile centre in 2011, with two decisions being relevant.
- 3.2 In February 2011 outline planning permission was granted for ‘construction of Respite Centre with associated car parking and landscaping – Application ref APP/10/00825. There are 8 conditions attached to the decision but none of these place any restriction on the use of the building. A copy is attached as Appendix 1.
- 3.3. In November 2011 the reserved matters application was approved (ref APP/11/01279). There are 14 conditions attached, but none of these relate specifically to the use of the building. A copy is attached as Appendix 2.
- 3.4 A copy of the approved layout plans for the centre as approved by APP/11/01279 is provided with the application and shows a ‘U’ shaped building with the outside two wings (west and east) laid out to provide mainly residential accommodation, and the remainder various medical, care and social facilities all relating to that care. This arrangement currently provides for 10 bedrooms, laid out to accommodate both resident patients and relatives.
- 3.5 Whilst described as a ‘Respite Centre’, the site effectively acted as a care facility providing care for young people with severe disabilities. Having regard to the facilities on site, namely residential facilities providing care to the occupants, there can be little doubt that a respite centre providing residential care to people in need of care falls within Use Class C2.

4.0 The Use Proposed and other changes

The use generally

- 4.1 The applicants wish to purchase the site and to continue using it to provide residential care to the occupants, but with a different group of residents requiring different types of care.
- 4.2 The centre will be registered with the Care Quality Commission as an ‘Acquired Brain Injury (ABI) Hospital’ with a focus on rehabilitation and long-term care. A typical length of stay may be 18 months, and this could include patients subject to section under the Mental Health Act.
- 4.3 Hence the focus of the new activities will no longer be restricted to children with disabilities, but instead upon adults with some form of cognitive behavioural, physical, functional, psychological, or emotional impairment due to a neurological injury or condition.
- 4.4 ABI patients require specialist care and this is increasingly difficult to find. As a statistic, there were almost 350,000 admissions to hospital with a brain injury on 2013/14 or approximately 956 per day. Currently many Hampshire residents need to be placed in hospitals outside the local area, meaning there is a need for more beds locally. The aim for such patients is to treat the conditions to help recovery and hopefully so that these could then be discharged to their home.
- 4.6 Comparing this use with the definition in paragraph 2.8 above, the use described sits firmly within Use Class C2.

Physical changes

- 4.7 In order to maximise the number of patients that can be cared for, it is proposed to make various changes to the internal accommodation, and to increase the number of beds to 15. These changes are identified in red on drawing No 2. Nearly all of these changes are internal to the building.

- 4.8 In addition to these internal changes to the arrangement of space, three changes are proposed to the inside face of the building (walls facing into the courtyard) as described below:-
- i) in the west wing a new window is to be added into what is now a blank wall, to provide light into a new bedroom.
 - ii) in the same west wing, a set of double doors (to the garden store) will be partially blocked up a new window inserted.
 - iii) In the eastern wing, a bedroom window will be replaced by a new doorway, to allow a bedroom to be used either as a bedroom or office, with access directly into the courtyard.
- 4.9 Externally the site will retain the same areas for parking cars and storing cycles, but will change the markings on the car park to provide 2 additional spaces. Hence there will be 16 spaces of which 2 will be for disabled users, rather than 14 spaces with 7 disabled. This change reflects the nature of the new use, which will no longer provide primarily for patients with physical disabilities.

5.0 Consideration of whether there is a need for planning permission**-The Use of the building**

- 5.1 The details available of the site history show that the site was permitted and has been used as a respite centre, providing residential accommodation and medical care to patients, and hence a use within Class C2.
- 5.2 The proposed use of the building to provide hospital beds for people suffering from a brain injury or neurological condition, receiving care from a range of staff and other healthcare professionals, is also a use firmly within Class C2.
- 5.3 If the existing and proposed uses are both within Class C2 then S 55(2) (f) of the 1990 Act, in combination with Article 3(1) and Class C2 of the Use Classes Order, specifies that no development is involved and hence there is no requirement for permission to be granted for this change in how the building will be used.

Internal changes/additional bedrooms

- 5.4 The internal changes will re-arrange how different spaces are used, and result in a net increase from 10 to 15 bedrooms. None of these will be evident externally. Section 55(2)(a)(i) provides that works which affect only the interior of the building are not development for which planning permission is required

other building works

- 5.5 Drawing 02 shows 3 changes that will be made to the external walls of the building, as described in para 4.8 above, one involving a new opening for a window, one the change from a doorway into a window and one from a window into a door. All of these changes are to the walls that face into the courtyard.
- 5.6 Notwithstanding the relatively small changes involved, Section 55(2)(a)(ii) provides that works which do not materially affect the external appearance of the

building, are not development for which planning permission is required. As these works face into the courtyard, and will not be visible outside of the courtyard, there will be no change to the external appearance and hence planning permission is not required¹.

Overall

- 5.7 The Local Planning Authority are invited to agree that the use described in Section 3 above would not involve 'a material change of use'; for which planning permission is required, as both the existing and proposed use within Class C2, and that the works shown on drawing 02 (and described in 4.7 and 4.8 above) are excluded from the definition of development by S55(2), and consequently that these changes can be made and undertaken without the need for a planning application.
- 5.8 The LPA is invited to issue the Certificate of Lawful use under S192 accordingly.

¹ Attention is drawn to para P55.17 in the Encyclopaedia of Planning Law, with reference to *Burroughs day v Bristol City Council*, which clarifies the appropriate test as a 'material affect', and that the change must be visible from a number of normal vantage points.