

21st January 2010

REF: SHA/15602

APPEAL AGAINST HAMPSHIRE PCT DECISION TO REFUSE AN APPLICATION BY DAY LEWIS PLC FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN RESPECT OF PREMISES IN THE VICINITY OF THE JUNCTION OF WHETSTONE ROAD AND CONWAY DRIVE, FARNBOROUGH

1 The Application

By application to Hampshire Primary Care Trust ("the PCT"), Day Lewis plc ("the Applicant") applied for inclusion in the pharmaceutical list in respect of premises in the vicinity of the junction of Whetstone Road and Conway Drive, Farnborough.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 14th January 2010 states:

- 2.1 In making its determination, the Committee's deliberations were as follows:
- 2.2 The Committee decided to determine the application without an oral hearing.
- 2.3 The Committee then had regard to the neighbourhood as variously proposed by the applicant, by Wm Morrison Supermarkets PLC and by the LPC as respondents, and was of the opinion that, pursuant to the site visit jointly undertaken by the PCT and PPSA in September, a more accurate definition of its eastern boundary than that defined by the applicant or Morrisons would be Minley Road, on the eastern side of which there is a pronounced difference in housing, both in age and size. Other concentrations of shops at the junction of Sandy Lane and Chapel Lane, and on Medway Drive, are strongly suggestive of other neighbourhood centres. The Committee therefore concurred with the neighbourhood proposed by the LPC in its representation of 12 October 2009, i.e., as bounded to the north by the M3 motorway, the east by Minley Road, by the railway line to the south and the A327 to the west.
- 2.4 The Committee then gave consideration to representations received by all respondent parties - Giffard Drive Surgery, Lloyds Pharmacy Ltd, Wm Morrison Supermarkets PLC, Mr B. Amlani (trading as Bridge Road Chemist), the LPC, and Vectrum Services Ltd for Chapel Lane Pharmacy, as to whether it would be either necessary or expedient to grant the application in order to secure the adequate provision of pharmaceutical services in the neighbourhood. The Committee was unaware of any evidence of inadequacy in the form of complaints, incidents or unscheduled closures notified to the PCT, and did not consider the prescription item totals issued and dispensed in the locality to be excessive or in any way indicative of any inability on the part of existing pharmacy providers to cope with demand. The Committee was therefore of the opinion that it was not necessary to grant the application. The Committee was also in agreement that the applicant had provided no evidence of any degree of inadequacy, and that with no fewer than eight pharmacies within a 1.5 mile radius of the proposed location of the premises and given the extant levels of opening hours and range of service provision, together with accessibility of public transport, it would not be expedient to grant the application, since no substantive improvement in service to the neighbourhood would result.

2.5 The Committee therefore determined not to grant the application.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority dated 14th January 2010, the applicant appealed against the PCT's decision. The grounds of appeal are:

3.1 We are writing to appeal the decision made by Hampshire PCT not to grant a NHS Dispensing contract at the above location.

4 Consideration

4.1 Regulation 29(9) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations") provides that "any notice of appeal made under this Regulation shall contain a concise statement of the grounds of appeal".

4.2 Under Regulation 29(10), there is provision to determine the appeal by dismissing it, if it discloses no reasonable grounds of appeal, or if the appeal is otherwise vexatious or frivolous.

4.3 The Committee had regard to Regulation 12(1) and 12(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations") which states :

'Subject to regulation 13, 19, 21, 25 and 26 an application shall be granted by the Primary Care Trust only if it is satisfied that it is necessary or desirable to grant the application in order to secure, in the neighbourhood in which the premises from which the applicant intends to provide the services are located, the adequate provision, by persons included in a pharmaceutical list, of the services, or some of the services, specified in the application ("the necessary or desirable test"). Subject to regulations 25 and 26 and paragraph (4), in considering whether the necessary or desirable test is satisfied, a Primary Care Trust shall have regard in particular to whether or not any of the following services are already provided by persons in the neighbourhood in which the premises named in the application are located, any pharmaceutical services specified in the application provided by persons included in a pharmaceutical list, or any directed services the applicant agrees to provide if his name is included in the pharmaceutical list; or any local pharmaceutical services provided under a pharmacy pilot scheme which are of the same description as any pharmaceutical services specified in the application. Whether the recipients of pharmaceutical services already have a reasonable choice with regard to; the pharmaceutical services provided in the neighbourhood in which the premises named in the application are located, by persons included in a pharmaceutical list; and the persons included in a pharmaceutical list from whom such recipients may obtain pharmaceutical services in the neighbourhood in which the premises named in the application are located; any other information available to the Primary Care Trust which, in its opinion, is relevant to the consideration of the application; and any representations received by the Primary Care Trust – under regulation 23(2) or (3).'

4.4 The Committee noted that the Applicant had not sought to challenge the reasons of the PCT, or provided reasons as to why the granting of the application would be either necessary or expedient.

5 Decision

In accordance with Regulation 29(10) the Committee dismisses the appeal.

Abby Richards

Appeal Officer

A copy of this decision is being sent to:

Day Lewis plc
Hampshire and Isle of Wight PPSA, on behalf of the PCT