

17 December 2009

REF: SHA/15426

APPEAL AGAINST LIVERPOOL PCT DECISION TO GRANT L. ROWLAND & CO (RETAIL) LTD APPLICATION FOR MINOR RELOCATION UNDER 500 METRES, FROM ASDA SUPERSTORE, UTTING AVENUE, LIVERPOOL, L4 9XU TO ON THE LAND OF THE FORMER MERSEY PRIDE PUBLIC HOUSE, UTTING AVENUE, LIVERPOOL. L4 8SX

1 The Application

By application dated 10 September 2009, L Rowland & Co (Retail) Ltd ("the Applicant") applied to Liverpool Primary Care Trust ("the PCT") for minor relocation under 500 metres, from Asda Superstore, Utting Avenue, Liverpool, L4 9XU to on the land of the former Mersey Pride Public House, Utting Avenue, Liverpool, L4 8SX. In support of the application it was stated:

- 1.1 We believe that this is a minor relocation due to no other contractors are affected. [sic]
- 1.2 The distance between the two sites is small, 200 m
- 1.3 The pharmaceutical services provided will be the same
- 1.4 The provision of services will be continuous
- 1.5 The relocated pharmacy will serve the same population and is in the same neighbourhood.
- 1.6 There are no barriers between the two sites to hinder access
- 1.7 Proceed out of Asda along Utting Avenue and turn right into proposed new premises.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 21 September 2009 states:

- 2.1 The application has been approved as a minor relocation in accordance with Regulation 6(3), NHS (Pharmaceutical Services) Regulations 2005 subject to the continuity of Pharmaceutical services and on the basis that the services provided from the new premises are the same as those provided from your existing premises.
- 2.2 The Pharmaceutical Practices Sub Committee of Liverpool PCT reached its conclusion on the following grounds:
 - 2.2.1 The proposed move is within the same neighbourhood.
 - 2.2.2 The distance of the move is small (143 metres between the existing and proposed premises).

2.2.3 There are no 'barriers' between the present and proposed premises.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 7 October 2009, Lloyds Pharmacy Ltd, appealed against the PCT's decision. The grounds of appeal were:

- 3.1 The proposed relocation is not in our opinion within the same neighbourhood. The two sites are dissected by the A5058 Queens Road dual carriageway. For a previous application this major A road was considered to be a neighbourhood boundary Ref SHA/ 11238 and 11785.
- 3.2 This road is a major arterial road into Liverpool and carries a large volume of traffic. The Appeal Unit will be aware that a neighbourhood can be defined using geographical physical features. This is a major geographical feature in the area. See attached map.
- 3.3 The PCT has not defined a neighbourhood for the application.
- 3.4 We would submit that the application does not meet the criteria for a Minor relocation as the move is into a different neighbourhood. We therefore respectfully ask the FHS Appeal Unit to reconsider the application and uphold this appeal.

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 CENTRAL OPERATIONS MERSEY

- 4.1.1 The PCT stands by its original decision to approve the application. in accordance with Regulation 6(3), NHS (Pharmaceutical Services) Regulations 2005 and reached its conclusion on the following grounds:
 - 4.1.1.1 The proposed move is within the same neighbourhood.
 - 4.1.1.2 The distance of the move is small (143 metres between the current and proposed premises).
 - 4.1.1.3 There are no 'barriers' between the current and proposed premises.
- 4.1.2 The appellant has stated in their appeal letter that 'the proposed relocation is not in our opinion within the same neighbourhood. The two sites are dissected by the A5058 Queens Road dual carriageway'. This statement made by the appellant is not correct.
- 4.1.3 The proposed premises (the land of the former Mersey Pride public house, Utting Avenue, Liverpool, L4 8SX) is actually situated at the end of the car park of the current premises at Asda Superstore, Utting Avenue, Liverpool, L4 9XU. Therefore, it is on the same side of the road and does not cross the 'boundary' of Queens Drive.
- 4.1.4 As the application was for a minor relocation under 500 metres the PCT did not define a neighbourhood at their meeting.
- 4.1.5 However, a neighbourhood has previously been defined for Rowlands Pharmacy, Asda Superstore, Utting Avenue, Liverpool, L4 9XU, the details of which were given in my previous correspondence to you of 28 October 2009.

5 Consideration

- 5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, (“the Committee”) had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the site of the proposed pharmacy.
- 5.2 It also had before it the responses to the Authority’s own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to Regulation 6(1) and 6(3) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) (“the Regulations”).
- 5.5 The Committee noted the PCT’s decision on this application had been notified with a right of appeal, to Lloyds Pharmacy. Regulation 29(2) indicates that where the PCT has determined an application to which regulation 6(1) applied, the applicant and any person who has been notified of the decision under regulation 27(1)(a)(ii) or (iii) may appeal to the Secretary of State. Regulation 27(1)(a) includes ‘an application to which regulation 6 applies’ thereby (in the Committee’s view) including regulation 6(3) (minor relocation applications under 500 metres). The Committee proceeded to determine the appeal by Lloyds Pharmacy.
- 5.6 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.7 The Committee noted that the PCT had not defined a neighbourhood in their decision letter as “the application was for a minor relocation under 500 metres”. The Committee takes no view on the procedural matter of the PCT in this instance, however notes their comments with regards to a previous neighbourhood definition for this area. The Committee were of the view that in the absence of any alternative neighbourhood they should accept the previously defined neighbourhood without prejudice to any future applications.
- 5.8 The Committee noted the assertions and basis of the appeal from Lloyds with regard to the A5058, Queens Road being a neighbourhood boundary and the proposed site and existing site being in different neighbourhoods. The Committee concurred with the view that the A5058 was a barrier to movement. However, the Committee noted that the map from the PCT and the map from the applicant with their original application form show that the proposed site and the existing site are not bisected by the A5058. The Committee also noted that the PCT clarified this in representations on the appeal and this has not been challenged by the appellant. The Committee were of the view that although the A5058 is a neighbourhood boundary, both the proposed and existing site were within the same neighbourhood.
- 5.9 The Committee noted that the distance between the two sites of 143 metres had not been disputed on appeal and that the appellant had not sought to argue that a different population would be served or that there would be an interruption in the provision of pharmaceutical services. The Committee was of the view that the move could be considered a minor relocation in accordance with the regulations.

6 Decision

The Committee was of the view that the proposed change of premises was a minor relocation. Accordingly the Committee dismisses the appeal.

Jill Jackson
Appeal Officer

A copy of this decision is being sent to:

L Rowland & Co (Retail) Ltd

Lloyds Pharmacy

Boots UK Ltd

Gorgemead Ltd

Central Operations Mersey on behalf of Liverpool PCT