

**APPEAL AGAINST MIDDLESBROUGH PCT DECISION  
TO REFUSE AN APPLICATION BY MR Z RAFIQ FOR  
PRELIMINARY CONSENT PRIOR TO INCLUSION IN  
THE PHARMACEUTICAL LIST AT THE OVAL,  
BROOKFIELD, MIDDLESBROUGH TS5 8HP**

**1 The Application**

By application dated 6<sup>th</sup> February 2009, Mr Z Rafiq ("the Applicant") applied to Middlesbrough Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at The Oval, Brookfield, Middlesbrough TS5 8HP. In support of the application it was stated:

- 1.1 The proposed new pharmacy will be located in the neighbourhood as defined:
  - 1.1.1 To the North: Mandale Road
  - 1.1.2 To the East: Acklam Road
  - 1.1.3 To the West: A19
  - 1.1.4 To the South: A174
- 1.2 For the purpose of this application the neighbourhood will be defined as Brookfield/Kader. A map of the proposed neighbourhood is attached with clearly defined boundaries.
- 1.3 The nearest Pharmacy to the proposed site is PJ Wilkinson Pharmacy on Acklam Road and this is about 1.4 miles away.
- 1.4 The current provision of pharmaceutical services in the area is inadequate; therefore the applicant believes the proposed application is both necessary and desirable to secure an adequate provision of pharmaceutical services within the vicinity.
- 1.5 According to the National statistics 2006 the population of Brookfield/Kader was 10830.
  - 1.5.1 16% of this population was under 15
  - 1.5.2 59% of this population was between 16 and retirement age
  - 1.5.3 25% of this population was above the retirement age
- 1.6 The applicant believes the present pharmaceutical service in the defined neighbourhood is inadequate for the following reasons:
  - 1.6.1 Over a quarter of the residents are above the retirement age. Travelling to and from the nearest pharmacy is not desirable as it is over a mile away. On dark afternoons and especially in winter it may not be possible for the majority of this population sub group to access pharmaceutical services.
  - 1.6.2 Patients with children who may only require a simple remedy for themselves or their children have to travel over a mile to obtain the service.
  - 1.6.3 The proposed pharmacy would be located on a busy shopping parade. The fact that there is only a single pharmacy at the edge of the defined

neighbourhood, which has such a large population, enhances the need for there to be a pharmacy.

- 1.6.4 A pharmacy would provide this community choice and above all convenience.
  - 1.6.5 While some of the population is motorized, this is by no means a reflection of the entire community. The high elderly profile often produces the heightened need for medication and travel difficulties.
  - 1.6.6 The majority of the population of the defined area live in and around the new proposed pharmacy and by having such a service close by it will allow people easy access to a health provider and also decrease their ever reliance on transport to access pharmaceutical services.
- 1.7 The applicant intends to provide all essential, advanced and enhanced services as commissioned by the PCT. Furthermore, the applicant also intends to provide other services such as:
- 1.7.1 Various diagnostic services
  - 1.7.2 Smoking Cessation service
  - 1.7.3 Collection and delivery service
  - 1.7.4 Care home services
  - 1.7.5 Emergency hormonal contraception (PGD)
  - 1.7.6 Minor ailment scheme
- 1.8 The proposed new pharmacy will be on the front line in providing services relating to health promotion and will be proactive in improving the lives of those around the pharmacy and the wider population.

## 2 The PCT Decision

The PCT considered and decided to refuse the application. The decision report circulated by letter dated 1<sup>st</sup> July 2009 states:

### Site Visit

- 2.1 The Panel visited the proposed site and noted the following:
  - 2.1.1 The nearest pharmacy to the vicinity proposed in the application is Boots Pharmacy at 15 The Viewley Centre, Hemlington, TS8 9JH. The distance between the existing pharmacy and the vicinity proposed by the application was considered to be a driving distance of 0.6miles.
  - 2.1.2 The proposed site for the pharmacy is located in a small parade of shops that might be considered the most central area for the neighbourhood. This includes Co-op, hairdressers, pet grooming and a bric-a-brac shop.
  - 2.1.3 The surrounding area is essentially private residential in nature.
  - 2.1.4 The parade is easily accessible with good terrain.
  - 2.1.5 Visitors to the parade can park on the roadside next to it.

2.1.6 The nearest GP premises to the vicinity proposed in the application is Coulby Medical Practice / Parkway Medical Centre, Cropton Way, Coulby Newham, Middlesbrough, TS8 0TL. The distance between the proposed pharmacy site and this GP premises is 2.11miles (driving distance).

2.1.7 There was no Bank, Post Office or GP surgery at the location.

#### Consideration of the Application

#### Determination of Neighbourhood

2.2 The PCT Panel noted the neighbourhood proposed by the Applicant being:

2.2.1 North: Mandale Road

2.2.2 East: Acklam Road

2.2.3 South: A174

2.2.4 West: A19

2.3 The Panel considered the neighbourhood proposed by the applicant, comments from respondents, and the site visit. The Panel were advised that there had previously been an application for this neighbourhood by United Pharmacies UK Ltd for a new pharmacy situated at Trimdon Avenue, Middlesbrough. The Panel agreed as there had been no significant changes to this area, this neighbourhood would stay as it had been defined previously.

#### Necessary or Desirable Test

2.4 Having defined the neighbourhood, the Panel then considered the criteria of necessary or desirable as set out in paragraph 12 of the Regulations.

2.5 The Panel determined:

The current level of access within the neighbourhood to the NHS pharmaceutical services the applicant proposed to provide.

2.6 The panel noted that there were no LPS or directed services in the neighbourhood. The panel also noted that there are no other pharmacies within the neighbourhood.

The extent to which services in the neighbourhood already offer a choice to patients which may be improved by the provision of additional facilities

2.7 Due to there being no other pharmacies within the neighbourhood the panel were of the opinion that the services the applicant would be delivering would have a positive impact on the area. The panel noted that although there are no other pharmacies in the neighbourhood, there are two just outside the boundary; one to the north east and the other to the south east. The panel also noted that there are 2 100hour pharmacies in close proximity. There was nothing to indicate the applicant would be providing any additional services to these pharmacies.

2.8 It was also noted that the present pharmacies are willing to provide additional services if the PCT requires them to. These pharmacies have already responded to requests from the PCT to adopt new services. In addition they have adjusted opening times in response to local demand.

The extent to which there is reasonable choice of providers in the neighbourhood which may be improved by additional providers.

- 2.9 The panel considered that although there was not an existing pharmacy within the neighbourhood, and therefore choice of provider could not be evidenced, pharmaceutical services are offered by the nearest existing pharmacy (1.63miles) located at The Viewley Centre in Hemlington, south east from the boundary of the neighbourhood. Additionally, services provided by the pharmacy on Acklam Road, are available to the neighbourhood, providing an element of choice.

The extent to which current service provision in the neighbourhood is adequately responding to the changing needs of the community it serves or to local PCT delivery plans designed to meet primary care policy objectives.

- 2.10 The panel noted that one of the current pharmacies located on Acklam Road, has recently extended their opening hours; it was felt that this demonstrates a need for additional hours in the area.

The extent to which the applicant proposes to improve service provision in the neighbourhood through innovation or new directions in delivery.

- 2.11 The panel were satisfied that there was no evidence of innovation or new directions in delivery of service identified in the application.

The extent to which the application will meet the need for specialist or other services which improve the provision of, or access to, services for example to specific populations or vulnerable groups.

- 2.12 The panel felt that there were no distinctive vulnerable groups within the neighbourhood, and noted that the applicant hadn't identified anything of this nature either: The panel agreed that granting this application may be convenient but doesn't imply it is necessary. The panel also noted that there was no evidence of the applicant seeking information from the local councillor.

The assessment of the overall impact on the neighbourhood in the long term.

- 2.13 The panel were satisfied that the current level of provision in the neighbourhood was adequate to meet both current and immediate needs and as a consequence there were no negative impact in not granting the application. The panel had taken into consideration the previous application decision (PCTs decision to refuse an application by United Pharmacies Ltd for preliminary consent to provide pharmaceutical services from Trimdon Avenue, Acklam, Middlesbrough). They felt that despite the applicant submitting a detailed application there was no additional evidence to satisfy that the application was necessary or desirable.

#### Decision

- 2.14 The Panel therefore concluded that for the reasons outlined above, the applicant has failed to demonstrate that a new pharmacy within the above neighbourhood is either necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood according to Paragraph 12 of the NHS (Pharmaceutical Services) Regulations 2005. The Panel therefore determined that this application be rejected.

The PCT subsequently notified the Appeal Unit that an incorrect version of the decision report had been circulated and issued an amended decision report by letter dated 20<sup>th</sup> August 2009 which states:

#### Site Visit

- 2.15 The Panel visited the proposed site and noted the following:

- 2.15.1 The site considered most likely as that proposed for the pharmacy was located in a small parade of shops. This includes a Co-Op, hairdressers, pet grooming and a bric-a-brac shop.
- 2.15.2 There was no Bank, Post Office or GP surgery at the location.
- 2.15.3 The parade is easily accessible, on level ground, providing good walking conditions with a pedestrianised area between the two rows of shops. Visitors to the parade travelling by car may park on the roadside next to it (as Panel members were all able to do). A number of people were observed using the shops and were observed arriving both on foot and by car.
- 2.15.4 The surrounding area is entirely private residential in nature containing a mix of well maintained housing, mainly semi-detached.
- 2.15.5 Whilst on site, the routes and distances (either on foot or by car) to the nearest existing pharmacies, the site of the most recent pharmacy application (rejected) and also the nearby branch surgery at 'Acklam shops' were noted by the Panel.

#### Consideration of the Application

- 2.16 The Panel was mindful of the requirement to consider this Application afresh as a new application, but also of the fact that there exists very recent application history in this neighbourhood. Panel therefore considered all of the information thereby available, whether or not it is specifically recorded here in this Report.

#### Determination of Neighbourhood

- 2.17 The PCT Panel noted the neighbourhood proposed by the Applicant being:
  - 2.17.1 North: Mandale Road
  - 2.17.2 East: Acklam Road
  - 2.17.3 South: A174
  - 2.17.4 West: A19
- 2.18 The Panel considered the neighbourhood proposed by the applicant, comments from respondents, and the site visit. The Panel referred to their recent consideration of an application by United - Pharmacies UK Ltd for a new pharmacy situated at Trimdon Avenue, Middlesbrough. The PCT defined the neighbourhood on 3 April 2008 as follows and as shown on the attached map:
  - 2.18.1 North: A1130 (Mandale Road)
  - 2.18.2 East: A1032 (Acklam Road)
  - 2.18.3 South: A174
  - 2.18.4 West: A19
- 2.19 The Panel agreed that there had been no changes that would require re-consideration and therefore confirmed the neighbourhood as stated.

#### Necessary or Desirable Test

- 2.20 Having defined the neighbourhood, the Panel then considered the criteria of necessary or desirable as set out in paragraph 12 of the Regulations. The Panel noted the absence of an up to date Pharmaceutical Needs Assessment. Nevertheless, the Panel considered each of the factors specified under Regulation 12, and also used the guidance to the Regulations as a checklist to thereby have regard 'in particular to' the required issues. In addition to information provided in the application, this included consideration of the responses to the consultation and other information available to the Panel which was considered relevant to determination of the adequacy of existing provision (including choice of provider and services) and the necessary or desirable test.
- 2.21 The Panel determined:
- The current level of access within the neighbourhood to the NHS pharmaceutical services the applicant proposed to provide.
- 2.22 With reference to the Application, the Panel considered the NHS Pharmaceutical Services the applicant proposed to provide and the proposed hours in which he intends to provide them. The Panel were also aware of those Enhanced services already established by the PCT and noted the requirement for the PCT to choose to commission these or other Enhanced services from the proposed pharmacy before they could become available from that location.
- 2.23 The Panel noted that there are no pharmacies within the neighbourhood and thereby no PhS, LPS or directed services from premises in the neighbourhood. It was also noted that it is not axiomatic that a pharmacy is required to be located within a neighbourhood in order to secure adequacy of pharmaceutical provision.
- 2.24 Using the attached map, the nearest pharmacy to the vicinity proposed in the application appears to be the Boots Pharmacy at 15 The Viewley Centre, Hemlington, TSB 9JH. In their response to the consultation Boots state that this is 0.6 miles, however, taking the shortest direct route by car, the distance between the existing pharmacy and the vicinity proposed by the application was determined to be approximately 1.5 miles.
- 2.25 Additionally, it was recognized that whilst this is a short distance, by major roads, this would not be considered to be the 'local' pharmacy of the residents and visitors to the neighbourhood as defined. This is in part because the locality of Hemlington is characterized by a large proportion of local authority housing.
- 2.26 The Panel used local knowledge to particularly consider the way in which the residents and visitors use the existing services provided at the shopping area of the application address, which does not contain a post office, or a bank for example. This was compared and contrasted to the use of the parade of shops which contains the nearest pharmacy (PJ Wilkinson - located at a distance of 1.2 to 1.4 miles dependant on the route by car or on foot). This parade contains a greater variety of service provision including more than one bank, a post office, a larger Spar store, hardware store, butchers, two bakers, several hairdressers, a dry cleaners and indeed the doctors (branch) surgery which is located within two to three retail units of the existing pharmacy. Residents and visitors of the neighbourhood as defined in this application, regularly access the latterly described 'Acklam Shops' containing the existing pharmacy either by car or on foot via adequate walking access and using several suitable crossing points.
- 2.27 A further 0.5 miles past this pharmacy and in the same direction along Acklam Road, patients may choose to visit the large Lloyds Pharmacy at Whinney Banks shops.
- 2.28 In the opposite direction along Acklam Road, there are 5 pharmacies less than 2.5 miles from the proposed site. The first, located at Hemlington (previously mentioned

1.5 miles away), three at Coulby Newham (2.1 to 2.3 miles) and the fifth at Marion 2.4 miles away.

- 2.29 Whilst Hemlington (and the pharmacy there) would not be considered as a logical place for the residents of this neighbourhood to routinely visit, the nearby locality of Coulby Newham would very likely be used more routinely. Around 2 miles away, Coulby Newham provides a very large Tesco supermarket (containing one pharmacy) and district shopping centre with a wide variety of shops (including two other pharmacies) a DIY store, gym, pub, fast food outlets, post office, petrol station, library, leisure centre including swimming pool, and several schools including a secondary Academy and so on. Two of the three 3 pharmacies at Coulby Newham offer 100 hours a week and it is considered that these pharmacies provide services to a far wider population than the traditional pharmacy 'neighbourhood' would represent.

The extent to which services in the neighbourhood already offer a choice to patients which may be improved by the provision of additional facilities

- 2.30 The Panel acknowledged that there is no pharmacy in the neighbourhood and therefore the introduction of a new pharmacy would offer an alternative source of pharmaceutical services to the neighbourhood.

- 2.31 The Panel were reminded of the proximity of the pharmacies closest to the neighbourhood boundary, and made aware of the range of services offered by the existing pharmacies within 2.5 miles of the proposed site. The seven pharmacies previously described offer all essential and advanced services, during opening hours that include hours outside of those offered by the applicant. Additionally, those pharmacies offer a considerable range of the PCTs commissioned enhanced services including Chlamydia screening, EHC, Middlesbrough Emergency Eye Care Scheme, Needle Exchange, Supervised consumption and Stop Smoking Services. The application did not therefore indicate that the range or choice of services would be improved.

- 2.32 It was also noted that the existing pharmacies are willing to provide additional services if the PCT chooses to commission them. The nearest pharmacy in Acklam has recently chosen to extend opening times.

The extent to which there is reasonable choice of providers in the neighbourhood which may be improved by additional providers.

- 2.33 The Panel again acknowledged that there is no existing pharmacy located in the neighbourhood and therefore the introduction of a new pharmacy would offer an alternative provider to the neighbourhood.

- 2.34 However, whilst having particular regard to the issue of choice, it is clear that in this case, taken with all other evidence, there is considered to be adequate provision of pharmaceutical services in and to the neighbourhood. The population have, and make use of, a reasonable choice of both provider and services from pharmacies immediately adjacent to the neighbourhood, and within 2.5 miles.

The extent to which current service provision in the neighbourhood is adequately responding to the changing needs of the community it serves or to local PCT delivery plans designed to meet primary care policy objectives.

- 2.35 The Panel was advised that the pharmacies considered to be offering services to the neighbourhood have previously responded, and continue to do so, to requests from the PCT to adopt new services. In addition, one pharmacy has recently chosen to adjusted opening times.

The extent to which the applicant proposes to improve service provision in the neighbourhood through innovation or new directions in delivery.

- 2.36 The Panel was satisfied that there was no evidence of innovation or new directions in delivery of service identified in the application.

The extent to which the application will meet the need for specialist or other services which improve the provision of, or access to, services for example to specific populations or vulnerable groups.

- 2.37 The Panel acknowledged the absence of an approved Pharmaceutical Needs Assessment but was not aware of any specific populations or vulnerable groups whose needs would require a new pharmacy in order to secure adequate provision of pharmaceutical services.
- 2.38 The application did not identify any potentially improved provision other than convenience.
- 2.39 Although the views of a local councillor were cited, no documentary evidence of these views was provided. The PCT were unaware of any complaints regarding adequacy of the existing provision.

The assessment of the overall impact on the neighbourhood in the long term.

- 2.40 The panel was satisfied that the current level of provision in the neighbourhood was adequate to meet both current and identified longer term needs. Additionally, there was no evidence presented to suggest that the existing pharmacies adjacent to the neighbourhood, would not be able to respond adequately to any change in pharmaceutical need as identifiable at this point.
- 2.41 Consequently, there would no long term impact of refusal to grant the application.

#### Decision

- 2.42 The Applicant had submitted their views on the adequacy of the existing pharmaceutical services, but it was not considered that inadequacy of existing service provision was evidenced.
- 2.43 The Panel therefore concluded that for the reasons outlined above, the applicant has failed to demonstrate that a new pharmacy within the above neighbourhood is either necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood according to Paragraph 12 of the NHS (Pharmaceutical Services) Regulations 2005. The Panel therefore determined that this application be rejected.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 18<sup>th</sup> July 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The applicant disagrees with the PCT panel view that the current provision in the neighbourhood was adequate to meet both current and immediate needs. This is due to the fact that the panel themselves state there is no pharmacy currently in the neighbourhood and as has been noted by the PCT panel "*the services the applicant would be delivering would have a positive impact on the area*". Furthermore the PCT panel agreed the granting of this application may be convenient.
- 3.2 There is no choice for people of this neighbourhood. To access Pharmaceutical services they have to leave their neighbourhood.

- 3.3 There are no Pharmacies in this neighbourhood of over 10,000 people and the effective walking distance to the nearest Pharmacy is over one mile. To access the 100 hour Pharmacies they have to travel nearly two and a half miles.
- 3.4 The proposed Pharmacy will be in the most central area of the neighbourhood and is easily accessible to most people.
- 3.5 There is a letter of support from the local councillor George W Rogers. It not only confirms his support but also the support of the locals, especially after the applicant spoke to a number of them in their regular resident council meeting.
- 3.6 Not everyone in the area has access to transportation and as the councillor in his letter states that the public transport is "*most unsatisfactory in its limitations and availability*".
- 3.7 The PCT panel notes that a Pharmacy on Acklam road has increased its opening hours. Considering it is not even in this neighbourhood how can this benefit people who still have to travel over a mile by foot or on the public transport that has already been criticised. Not everyone in this neighbourhood has access to a car and those that do usually share the car so it is not always available when needed.
- 3.8 As has been noted in the councillor's letter, there are a significant number of elderly people in the area of the proposed pharmacy and it can be difficult for most of them to access pharmaceutical services without incurring additional costs and inconvenience.
- 3.9 The applicant believes there is great merit in approving this application, as a Pharmacy would serve this neighbourhood that has, as the local councillor states been "*poorly served with regard to being able to access a pharmacy*".

#### 4 Preliminary Consideration

- 4.1 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.
- 4.2 It also had before it the responses to the Authority's own statutory consultations.
- 4.3 On the basis of this information, the Committee considered that it was necessary to hold an Oral Hearing, before determining the appeal.
- 4.4 On 13<sup>th</sup> October 2009 a panel was appointed to hear the appeal which took place on 3<sup>rd</sup> November 2009 at Poole House, Stokesley Road, Nunthorpe and a list of those who attended is annexed at Appendix A.

#### 5 Summary of Written Representations

This is a summary of representations received on the appeal. A summary of those representations made to the PCT are only included in so far as they are relevant and add to those received on the appeal.

##### 5.1 SUPERDRUG STORES PLC

- 5.1.1 Superdrug have no further comments to make at this stage, but wish to be kept informed of the situation.

##### 5.2 P J WILKINSON CHEMIST

5.2.1 This appeal should be denied due to the following facts

5.2.1.1 The applicant has failed to discount any of the reasons given by Middlesbrough PCT against a new pharmacy being granted, other than to repeat the convenience of a new pharmacy being established in the neighbourhood.

5.2.1.2 The original neighbourhood established by Middlesbrough PCT and referred to in the appeal letter shows Acklam Road up to the boundary of Mandale Road. This pharmacy at 273a Acklam Road is within the designated boundary and therefore it is incorrect to state that the neighbourhood has no established pharmacy and all the associated remarks should be disregarded.

5.2.2 The appeal should be rejected for those reasons.

### 5.3 LLOYDS PHARMACY LTD

5.3.1 Lloyds maintain their objection to this application as they contend that the addition of a further chemist contractor cannot be considered necessary or desirable in order to secure the adequate provision of NHS pharmaceutical services to the area.

5.3.2 The proposed site is already served by the Boots Pharmacy, P J Wilkinson and Lloydspharmacy. There is no evidence that there is a need for an additional pharmacy at the proposed site. The existing pharmacies also provide the services that the PCT require. The PCT made a thorough consideration of the application and arrived at the correct decision.

5.3.3 For the above reasons therefore Lloyds would kindly ask the FHS Appeal Unit to dismiss the appeal as adequate pharmaceutical services are already provided.

### 5.4 BOOTS UK LTD

5.4.1 Boots agree with the PCT decision to reject the application and their reasoning. The PCT have provided a full statement of reasons to support their decision, which is consistent with previous determinations.

5.4.2 Whilst there may be no pharmacies currently within the PCT's defined neighbourhood, Boots concur with the approach of the PCT in considering services outside the neighbourhood accessed by those in the neighbourhood; an approach that has been in place for many years and was specifically confirmed by the High Court in the case of R v Humberside FPC ex parte Dr Moore & Crump from December 2005.

5.4.3 Given the proximity of two existing pharmacies to the boundary of the neighbourhood and the movement of patients throughout the wider area, Boots submit that it was appropriate for the PCT to consider services provided outside of the defined neighbourhood in this case.

5.4.4 The Boots UK pharmacies located at Hemlington and Coulby Newham provide services to patients residing in the Brookfield area. The majority of these patients visit the pharmacy to access pharmaceutical services, however free delivery services are provided to the neighbourhood from both pharmacies should a patient require such.

5.4.5 It is Boots' understanding that many patients that visit their Coulby Newham pharmacy do so when visiting the Medical Practices located on Cropton Way or to shop at the Tesco Superstore at the Parkway Shopping Centre.

- 5.4.6 In addition to Boots' pharmacy Parkway Shopping Centre, patients also have easy access to a choice of extended hours pharmacies (Tesco and Lloyds).
- 5.4.7 The applicants proposed site is located within the Brookfield ward. Information from the 2001 census indicates a high level of car ownership in this ward with approximately 85% of households having access to at least one private vehicle. For those who do not have access to a car, bus services run through the neighbourhood including services from The Oval to Hemlington, Coulby Newham and Middlesbrough Bus Station. A concessionary travel scheme is available for the over 60's.
- 5.4.8 The number of people living within the Brookfield ward that rate their health as good is 70.4% v a Middlesbrough average of 65.2% and the national average of 68.7%.
- 5.4.9 Approximately 93% of households within the ward are owner occupied and owned outright (43.2%) or owned with a mortgage or loan (49.8%). Such statistics indicate residents of the ward generally have a good level of mobility, health and standard of living.
- 5.4.10 Whilst Boots acknowledge Councillor Rogers comments with regard to the number of aged residents in the area, information gained locally would suggest these residents tend to be the more affluent retirees.
- 5.4.11 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

## 6 Unsolicited comments

### 6.1 COUNCILLOR G W ROGERS

- 6.1.1 With reference to an application by Mr Rafik to open a Pharmacy at the Central Parade shopping area in the district of Brookfield, in the town of Middlesbrough.
- 6.1.2 Mr Rafik wishes to serve the population of Brookfield, and part of Acklam which borders Brookfield with a pharmacy centred in Brookfield, this would be of great importance in the service provision so sadly lacking in this area at the present. The population of the area defined is significantly one of aged residents and incurs a bus trip to the nearest available pharmacy, this in an area where public transport is most unsatisfactory in its limitations, and availability.
- 6.1.3 The nearest pharmacies are a considerable distance to travel to, and consequently incur a financial burden to those residents on low incomes. To be able to access a pharmacy in Brookfield would be of enormous help to them.
- 6.1.4 Mr Rafik attended the Brookfield Community Council meeting and addressed the meeting on the 27<sup>th</sup> of May 2009, he explained his attempt to open a pharmacy at the address fore mentioned and he was very well received by all.
- 6.1.5 The Chairman Mr Ken Johnson asked the meeting if they would wish to register their feelings through a vote on the matter, it was in favour of Mr Rafik opening a pharmacy in the Oval Central Parade.
- 6.1.6 Councillor Rogers encloses the minutes of the meeting.

- 6.1.7 As Councillor for the Brookfield ward for many years it has always been an issue in the area that we are poorly served with regard to being able to access a pharmacy in, what is a high density residential area of some six thousand residents in Brookfield and another four to five thousand peripheral to Brookfield, it would most certainly be a significant provision to the residents if Mr Rafiks application were to be granted.

## 7 Evidence at the Appeal

### 7.1 Mr N Wardle (for the applicant)

- 7.1.1 The provision of pharmaceutical services within the neighbourhood was such that a pharmacy was desirable for the following reasons. Firstly the size and the nature of the resident population, secondly the lack of provision in the neighbourhood, thirdly the difficulties of accessing other pharmacies mainly distance, fourthly the lack of enhanced services, fifthly the lack of choice, sixthly the convenience of the proposed site, seventhly the support from third parties, in particular Councillors and finally that fact that the opening hours of nearby pharmacies were not adequate.
- 7.1.2 He confirmed his agreement to the suggested neighbourhood. The neighbourhood had a population of 10,740 according to the 2001 census. It was possible that the Bluebell housing estate in the southeast should be included as part of the neighbourhood.
- 7.1.3 The housing was mixed and was mainly owner occupied. There were many bungalows and the bungalows were mainly occupied by the elderly. The age profile of the neighbourhood was in line with the national average.
- 7.1.4 The neighbourhood contained three primary schools and one secondary school which would produce several visitors to the neighbourhood on a daily basis.
- 7.1.5 The parade of shops at the Oval where the applicant would open a pharmacy had a large Co-operative store which included a post office and the post office offered banking facilities. Other shops within the neighbourhood included a Tesco Express store and a parade of shops on Trimdon Avenue. The proposed pharmacy would be at the heart of the neighbourhood.
- 7.1.6 Access to nearby pharmacies was difficult. The nearest pharmacy was not near. It was a long walk and would be a long walk for most residents throughout the neighbourhood.
- 7.1.7 The Boots pharmacy in Hemlington was even further. A footpath to that pharmacy passed through unlit woodland and the walk took over 30 minutes.
- 7.1.8 A bus service did serve the neighbourhood but it did not secure adequate provision. The bus routes had recently been changed and reduced. The service ran every half hour but was not reliable. A trip by bus to Wilkinsons pharmacy would involve a one hour round trip.
- 7.1.9 Car ownership within the neighbourhood was fairly high but 15% of the residents had no access to a car and 50% of the population only had use of one car. The elderly were more likely not to have a car and they had the greater need for pharmaceutical service.
- 7.1.10 Parking at the Wilkinsons pharmacy was difficult. There were regularly queues onto the main road waiting to turn into the shopping precinct.

- 7.1.11 The applicant would open his pharmacy for longer hours than other local pharmacies which closed at 5.30pm and the applicant would not close his pharmacy at lunchtime.
- 7.1.12 The PCT commissioned several enhanced services although these were not available at all pharmacies. These included Chlamydia screening, EHC, needle exchange, supervised consumption of Methadone, smoking cessation, the eye care scheme, hay fever treatment and cardiovascular screening.
- 7.1.13 The nearest two pharmacies provided very few of these enhanced services. In particular this application would provide EHC, supervised consumption of Methadone and cardiovascular screening which were not available at the nearby pharmacies.
- 7.1.14 With regards to choice there were no other pharmacies within the neighbourhood.
- 7.1.15 It was unfair to say that this ward was not as deprived as others in Middlesbrough. It is at best average for the country and was an area that had its own needs.
- 7.1.16 It was common ground that the residents were not able to walk to the nearest pharmacy.
- 7.1.17 The services within the neighbourhood fulfilled the daily needs of its residents.
- 7.1.18 The fact that the nearest pharmacy had changed its opening hours indicated the value of choice and competition.
- 7.1.19 For all the above reasons there was an inadequacy within the neighbourhood and a new contract was desirable.

## **7.2 Councillors G and P Rogers**

- 7.2.1 (This evidence was mainly provided by Cllr G Rogers although a few questions were answered by his wife, Cllr P Rogers). He had been a resident in the neighbourhood for 43 years.
- 7.2.2 There had been no recent developments within the neighbourhood but planning permission had recently been applied for in respect of land at the south west of the neighbourhood which would lead to further housing.
- 7.2.3 His role was to ensure that residents of his ward enjoyed good service provision. His ward was Brookfield which comprised some two thirds of the defined neighbourhood. There were many elderly people in the ward. It was a tight knit community. 96% of properties near the Oval shopping parade were bungalows.
- 7.2.4 Many of the residents did not have use of a car and the bus service was not good. Not many of the residents used taxis although oddly many taxi drivers lived nearby.
- 7.2.5 A pharmacy near the neighbourhood would be massively helpful.
- 7.2.6 Until recently Wilkinsons had not opened at 8.30am. Waiting times at the Wilkinsons pharmacy were often 25 to 30 minutes.

- 7.2.7 He was also a member of other committees serving the estate. There was a lot of support for a pharmacy from residents especially support from elderly residents living at the south end of the neighbourhood.
- 7.2.8 The schools within the neighbourhood certainly attracted pupils from outside and some travelled a considerable distance.
- 7.2.9 The number 13 bus service ran through the neighbourhood and this was free for the over 60s. The fare would be 70 pence from Trimdon Avenue to the Wilkinsons pharmacy.
- 7.2.10 The plan did not show the existence of a branch surgery which was situated near the Wilkinsons pharmacy on Acklam Road. This surgery closed at 3.45pm.
- 7.2.11 His wife did her main shopping at the Sainsburys store in the town centre. She did not drive and it was easier to get there by public transport than other local supermarkets.
- 7.2.12 It was thought to be a relative healthy ward in national terms. About 9% said that their health was not good.
- 7.2.13 Residents were usually able to visit their local doctor often with the help of neighbours who provided transport.

### **7.3 Mr P Wilkinson**

- 7.3.1 The current application was no different to that made by United Pharmacies in 2008. The PCT refusal had not been appealed.
- 7.3.2 The neighbourhood was slightly different now in that there were two local 100 hour pharmacy's so the population had more choice. There were seven pharmacies within a two mile radius and access to these pharmacies was acceptable.
- 7.3.3 There was high car ownership locally. Most of his customers visited by car. The precinct could get congested but there was a quick turnover of customers.
- 7.3.4 He had worked from his current pharmacy for 13 years during which time there had been a constant demand.
- 7.3.5 The pharmacy offered all enhanced services provided by the PCT including smoking cessation, eye care, Chlamydia testing, the C card scheme (condoms) and he was awaiting accreditation so that he could provide EHC. He offered a collection and delivery service which was well used and he was hoping to take part in cardiovascular screening.
- 7.3.6 The delivery service extended as far as North Ormesby. Two members of his staff dealt with this. There were 5/10 deliveries per day some of which were to the Brookfield area.
- 7.3.7 The pharmacy hours had recently extended but there was very little custom before 9am and after 5pm. Patients tended to go out after their tea to one of the local 100 hour pharmacy's. He did not serve any care homes.
- 7.3.8 He had completed 10 MUR's this year but it was not a service that he advertised.

#### 7.4 Mrs J Watson (Boots)

- 7.4.1 She confirmed agreement to the definition of neighbourhood suggested by the PCT.
- 7.4.2 The neighbourhood was well established comprising well maintained houses. The two political wards within the neighbourhood were two of the most affluent wards in Middlesbrough and there was a higher than average house and car ownership.
- 7.4.3 The Henlington pharmacy was used by people from Brookfield. It was possible to access Henlington by way of an underpass under Parkway.
- 7.4.4 Historically Middlesbrough people tended to stay loyal to a doctor so in some cases travelled a considerable distance to a doctor.
- 7.4.5 Up to 25% of the prescriptions at the Boots store at Coulby Newham came from residents of the Brookfield area who were thought to be visiting that area to shop at Tesco.
- 7.4.6 The three main bus services in the area were number 12 which ran from Coulby Newham to the town centre every ten minutes, number 13 which ran from Hemlington via the Oval precinct to the town centre every 30 minutes and number 14 which ran from Trimdon Avenue to the town centre every 20 minutes.
- 7.4.7 Both the local Boots pharmacies had consulting rooms. The Hemlington pharmacy offered collection and delivery. There were 30 Methadone patients but there was not a serious drug problem locally.
- 7.4.8 The enhanced services offered at the Coulby Newham pharmacy were more extensive than the Hemlington pharmacy. Both pharmacies provided domiciliary dosage aids.
- 7.4.9 No evidence had been presented of any unmet health needs.

#### 8 Site Visit

- 8.1.1 The application relates to the Brookfield estate, one of several similar estates constructed within the last fifty years to the south of Middlesborough and divided by busy roads. There is very little industry in the immediate area with limited facilities to cater for the needs of the local residents. The entire area is generally level with some slight inclines. All the roads and pavements in the area were well maintained and well illuminated although some footpaths linking the estates were not lit.
- 8.1.2 The panel started the site visit at the site of the application at the Oval shopping precinct at the southerly end of the large Brookfield estate which is bounded on all sides by main roads. The estate comprises mixed housing of good quality mainly built in the 1960's and 1970's. There are few facilities within the estate although there are two small parades of shops at the Oval and on Trimdon Avenue. The estate is quiet with very few pedestrians observed. There is a high proportion of bungalows at the southerly end of the estate near to the Oval precinct suggesting a high elderly population.
- 8.1.3 The Oval shopping precinct which is the site of the application does not have the benefit of a dedicated car park but ample side street parking is available. The main shop on the precinct is a Co-Operative food store which is well appointed and attractive and contains a post office. It was however extremely

quiet at the time of the panels visit. There are few other shops on the precinct and apart from the Co-Operative store none which are likely to attract customers on a daily basis.

- 8.1.4 The panel walked from the precinct to the Wilkinsons pharmacy on Acklam Road walking along Malvern Drive onto Acklam Road. The distance was measured to be 2,140 metres and the walk took 27 minutes. There are no barriers between the two sites, Acklam Road being easy to cross at various crossing points. It is not a pleasant walk however along a busy road and few people were observed walking. Bad weather would make the walk even more difficult.
- 8.1.5 The nearest pharmacy to the site of the application was assumed to be Wilkinsons which is situated on a busy and congested precinct to the north of the site. (As the crow flies the nearest pharmacy would be the Boots pharmacy at Hemlington, mentioned below, but the journey to this pharmacy is difficult and not direct). The panel noticed a queue of traffic waiting to turn into the precinct which caused queuing on Acklam Road. The precinct had no empty units. There is a good variety of shops on the precinct including food shops and restaurants but no major supermarket. The pharmacy within the precinct was not obvious to passers by with no clear sign posting.
- 8.1.6 Although the panel observed a number of buses travelling up and down Acklam Road very few buses or bus stops were observed within the Brookfield estate.
- 8.1.7 The A174 Parkway which is a major road running in an easterly direction from the A19 is a significant barrier to travelling south from Brookfield. To the south of The Parkway is a distinctly different estate, Hemlington. The houses there seemed slightly newer. There is a larger shopping precinct at the centre of Hemlington which includes an NHS clinic and an Alliance pharmacy. The panel were advised that a Darzi Centre is to open there in December. The precinct was reasonably busy at the time of the Panel's visit but there seemed to be little there that was likely to attract visitors from outside Hemlington.
- 8.1.8 The panel also visited the considerably larger shopping centre at Coulby Newham which by way of a contrast clearly attracts visitors from throughout the area. This includes a Tesco Extra superstore as well a covered shopping mall and a large free car park. Adjacent to the Tesco store are two doctors surgeries and a Lloyds pharmacy. There is a Boots pharmacy within the covered shopping area and also a pharmacy within the Tesco store which is open long hours.
- 8.1.9 The panel observed very few if any developments within the area. Some housing was being constructed at the northerly end of Acklam Road but there are no signs of recent or current developments within the Brookfield estate.
- 8.1.10 The panel noticed a secondary school and three primary schools within the Brookfield estate but no industry that would attract visitors into the area on a daily basis.
- 8.1.11 The panel noted that in order to discourage through traffic, Trimdon Avenue was blocked at its southerly end. Accordingly, residents at the south west corner of the Brookfield estate could not drive easily to the Oval precinct without travelling in a northerly direction and then through the housing in the centre of the estate.

- 8.1.12 All the shops within the Brookfield estate provided only basic needs suggesting that the residents regularly left the estate, in particular to obtain most services including medical.

## 9 Panels conclusions

- 9.1.1 The panel agreed the suggested definition of neighbourhood. It had been agreed by the parties. The boundaries on all four sides were comprised of busy roads which formed physical barriers.
- 9.1.2 Accordingly, the neighbourhood was almost exclusively residential with no doctors surgery, no pharmacy no industry or commerce and limited retail facilities. There were four schools which would attract some visitors to the neighbourhood on a daily basis particularly during term time.
- 9.1.3 The population of the neighbourhood seemed to be stable. No major developments had taken place within the neighbourhood in recent years and no firm evidence had been put forward of any proposed developments in the near future although Cllr Rogers did refer to potential development in the south of the neighbourhood.
- 9.1.4 The panel did not identify any unmet health needs for the population of the neighbourhood. There were a few gaps in the provision of enhanced services at pharmacies outside the neighbourhood which would be used by residents of the neighbourhood.
- 9.1.5 The health of the population although reasonably good for the Middlesborough area was average in national terms. The same conclusion could apply to the mobility of the population.
- 9.1.6 The panel accepted that there was a pocket of elderly residents living at the south end of the neighbourhood which would be the area to be served by a new pharmacy. Partly owing to the fact that the main road through the neighbourhood, Trimdon Avenue was not continuous for vehicular traffic the panel considered that the proposed pharmacy would not serve many of the residents in the north of the neighbourhood who would continue to access pharmaceutical services outside the neighbourhood.
- 9.1.7 The panel accepted that there was no choice of pharmacies within the neighbourhood at present and this was a factor that the Panel noted in reaching a decision. There were a variety of providers close to the boundaries of the neighbourhood offering a wide range of services. Provision of services out of normal hours was not considered to be a problem owing to the existence of two 100 hour pharmacies close to the neighbourhood.
- 9.1.8 Taking into account the pharmacies close to the boundaries of the neighbourhood and the fact that most of the residents would leave the neighbourhood on a regular basis to access other services the panel concluded that a new pharmaceutical contract was not necessary.
- 9.1.9 However the panel considered that accessing the nearby pharmacies, even for residents who had use of a car, was not easy. None of the nearby pharmacies were within walking distance, the public transport was not ideal in that services were infrequent and the journey times long and parking at the Wilkinsons pharmacy could be difficult.
- 9.1.10 The panel were impressed by the views of the witness for the applicant who highlighted the difficulties being experienced by the elderly population living in the south of the neighbourhood. A pharmacy at the Oval precinct where the existing Co-operative food store would supply most of the residents daily

needs would be a great help to the elderly local residents for whom accessing other local pharmacies is at present difficult. The panel also appreciated that these elderly residents would have a high demand for dispensing services. The panel however acknowledged that the pharmacy would be unlikely to attract customers from outside the neighbourhood and as mentioned above the pharmacy would also be unlikely to be of use to the residents in the north of the neighbourhood.

9.1.11 The panel unanimously concluded that the existing provision of pharmaceutical services within the neighbourhood was not adequate and it was desirable that the application should be granted. The nature of the population to be served by the proposed pharmacy and the difficulties in obtaining access to other nearby pharmacies were persuasive factors for the panel in deciding that the degree of inadequacy was such that a new pharmacy contract should be granted.

## 10 Recommendation

10.1.1 The panel would accordingly recommend that the appeal be allowed and the application granted.

Signed.....

Alan Tomlinson

Mr N Chapman

Mr E Richards

Dated this

day of

2009

## APPENDIX A

### ORAL HEARING ATTENDANCE LIST

#### CHAIR

Mr Alan Tomlinson

#### PANEL

Mr N Chapman  
Mr E Richards

#### APPLICANT/ APPELLANT

Mr N Wardle  
Mr Z Rafiq  
Cllr G Rogers  
Cllr P Rogers

Charles Russell Solicitors representing:

#### INTERESTED PARTIES

Mr P Wilkinson

PJ Wilkinson Chemist

Mr B Morgan  
Mrs J Watson

Cleveland LPC  
Boots UK Ltd