

21 January 2010

REF: SHA/15477

APPEAL AGAINST NORFOLK PCT DECISION TO GRANT APRIS MEDICAL SERVICES LTD APPLICATION FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT THE SURGERY, 48 OVERSTRAND ROAD, CROMER NR27 0AJ

1 The Application

By application dated 25 February 2009, Apris Medical Services Ltd ("the Applicant") applied to Norfolk Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at The Surgery, 48 Overstrand Road, Cromer, NR27 0AJ. The following information was provided in support of the application:

Introduction

1.1 In accordance with the NHS (Pharmaceutical Services) Regulations 2005, Apris Medical Services Ltd is applying to site a pharmacy in the grounds of the Surgery, 48 Overstrand Road, Cromer, Norfolk, NR27 0AJ. Apris Medical Services Ltd is a company wholly owned by the partners of Cromer Practice Group. In line with the guideline document that relates to the NHS (Pharmaceutical Services) Regulations 2005, the applicant has outlined why they believe this application will address the local pharmaceutical service needs of the neighbourhood. As there is pharmaceutical services provision in the neighbourhood this application should be considered necessary and desirable/expedient with respect to the 'control of entry' test.

Neighbourhood

1.2 The neighbourhood has been defined by the following roads:

North —the intersection of Overstrand Road and Norwich Road

West - Norwich Road.

East - Overstrand Road.

South —White House Estate.

(map provided)

1.3 There are no pharmacies currently located within the boundary of the neighbourhood. Outside the neighbourhood there are two pharmacies owned national chains. Both of these are located close together in Church Street which is in the congested town centre. The parking in the town centre is widely acknowledged as being difficult. For older people without the use of cars, the current walk from the doctor's surgery to the existing pharmacies and the journey home would prove extremely challenging; especially as a result of the geography of Cromer.

1.4 The applicant has used the ward of Suffield Park as an approximation to the 'footprint' of the defined neighbourhood. Based on the 2001 Census data, the applicant has documented below what they believe are the key statistics and where appropriate the implications for pharmaceutical services:

- 1.4.1 The population of the ward of Suffield Park is 3867
- 1.4.2 32.6% of the population are 65 or older in comparison with the English national average of 15.89%. Older people, as the National Service Framework for Older People acknowledges, are the main users of health and social care services. In effect there are approximately twice as many people aged 65 and older living in Suffield Park compared to the national average.
- 1.4.3 28.1% of households do not own a car compared to the national average of 26.8%
- 1.4.4 10.86% of the people in Suffield Park described their health as Not Good compared to the English average of 9.03%.
- 1.4.5 There are 25.5% people with a limiting long-term illness, compared to the English average of 17.9%. Consequently there are in effect 42.5% more people in Suffield Park with a limiting long-term illness compared to the national average.

Key Criteria

Reasonable Choice

- 1.5 The guidance to the regulations state the rationale for the introduction of the concept of 'reasonable choice' The applicant has documented below the pertinent sections of the guidance that relate to this application:

These criteria were introduced by virtue of Section 42(3)(k) of the NHS Act 1977. This allows for regulations to include provision as to criteria which are to be applied when making decisions under the Regulations. The criteria are defined in regulation 12(2)(b) (as amended by SI 2005/1015). This states that Primary Care Trusts shall have regard in particular to:

“whether the recipients of pharmaceutical services already have a reasonable choice with regard to

i.the pharmaceutical services or directed services provided in the neighbourhood in which the premises named in the application are located, by persons included in the pharmaceutical list; and

ii.the persons included in a pharmaceutical list from whom such recipients may obtain pharmaceutical services or directed services in the neighbourhood in which the premises named in the application are located.

3.71 *Primary Care Trusts should note that these new provisions include the term “reasonable choice” but do not include the term ‘competition’ (for legislative drafting reasons) and that these provisions are still within the overall test of adequacy. Nonetheless, they enable Primary Care Trusts to take into account additional factors when determining adequacy. This is to help meet the commitment, as set out in the NHS Improvement Plan and in Building on the Best: Choice, Responsiveness and Equity in the NHS to expand patient choice within primary care. So just as Primary Care Trusts have previously had particular regard to the current availability of services in the neighbourhood, so they now also have particular regard to the choice of services and of providers in the neighbourhood.*

Checklist of factors to be considered under “choice” promoting more competition:

√What is the current level of access within the neighbourhood to the NHS pharmaceutical services which the applicant proposes to provide?

√*What is the extent to which services in the neighbourhood already offer a choice to patients which may be improved by the provision of additional facilities?*

√*What is the extent to which there is a reasonable choice of providers in the neighbourhood which may be improved by additional providers?*

√*What is 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 Primary Care Trust delivery plans designed to meet primary care policy objectives?*

√*What is the extent to which the applicant proposes to improve service provision in the neighbourhood through innovation or new directions in delivery?*

√*What is the extent to which the application will meet the need for specialist or other services which improve the provision of, or access to, services such as for specific populations or vulnerable groups?*

√*What is the PCT's assessment of the overall impact on the neighbourhood in the longer-term?*

- 1.6 Since there are no pharmacies in the neighbourhood and nearly 28% of households do not own a car the applicant believes it is clear that the local population do not have reasonable choice with respect to pharmaceutical services. The long term impact on the locality would be positive with respect to the provision of innovative services which will meet the health needs of the local population.

Adequacy

- 1.7 The regulations state that securing adequate provision is the key requirement for Primary Care Trusts. In assessing adequacy, the guidance to the regulations state that:

3.68 In assessing whether or not there is adequate provision of pharmaceutical services in a neighbourhood, explicit criteria of choice were introduced to the assessment. These criteria were not necessarily all new and Primary Care Trusts may already have taken some into account. However, from April 2005, clearer emphasis has now been placed within the regulations on certain key factors associated with promoting more choice for patients in order to promote more competition.

3.69 These factors are:

the level of access.

choice and diversify in the neighbourhood.

innovation in service delivery.

services to specific populations/to meet disease needs.

the overall longer-term impact.

Access

- 1.8 It is highly likely that the households that do not have access to a car are owned by older people who are high users of pharmaceutical services. As stated previously there are a higher than average proportion of people in the neighbourhood that would describe their health as Not Good; also there are a significantly higher than average proportion of people who have limiting long-term illness.

- 1.9 Apris Medical Services Ltd would contend that the application plans for the best access to pharmaceutical services in the neighbourhood, in a position which has vastly better access to parking than in Church Street, and a convenient one-stop approach to healthcare as outlined in recent government proposals. As well as Lord Darzi's review there are other earlier examples of support for this approach. Co-location of primary, community and social care within the same building is a key theme of modern primary care services, as evidenced by the current trend towards 'polyclinic' approach. To quote the Health Minister in his address to a national LIFT (Local Improvement Finance Trust) conference on 16 October 2006:

"The primary, community and social care of tomorrow cannot be delivered from the facilities of yesterday. It is only logical for these complementary care systems to be located on the same site; the move makes sense if they are to work together effectively. At present, this often does not happen."

"We should look forward to a point where it will be increasingly common for patients to visit a local 'one-stop shop' to see their GP, a physiotherapist, a specialist nurse, and a social worker. They should be able to attend an out-patient clinic, have a prescription made up at the pharmacists, and, possibly, ask for an eye or hearing test. Patients should no longer have to travel all around town for these different services. It is particularly important to bring social care and voluntary organisations together with health services."

He added that modernising physical premises could also bring about shifts in working practices and stimulate far-reaching organisational changes:

"NHS LIFT is not simply about replacing old buildings with new ones without any change in the services they offer. It gives the public sector the opportunity to redesign services to achieve a step-change in the way they are delivered. It is breaking down the organisational silos that have existed for so long between the primary and secondary healthcare sectors and between the NHS and social care."

- 1.10 Access to pharmaceutical services outside the neighbourhood are limited as a result of poor parking facilities in Cromer town centre. The proposed location of our pharmacy is directly adjacent to a car park with adequate car parking spaces, on an out of town site. The proposed new pharmacy will be easily accessible to all patients in the locality. Priority disabled parking spaces will be positioned to be within very close proximity to the front doors of the proposed new pharmacy.
- 1.11 The hours of service for the proposed pharmacy will reflect the opening hours of the local practice, so ensuring optimal access to pharmaceutical services.
- 1.12 The applicant believes, based on the above facts, that Apris Medical Services Ltd's proposed application would provide improved access to pharmaceutical services to the people in the defined neighbourhood. The Disability Discrimination Act 1995 (DDA) requires contractors to make 'reasonable adjustments' to assist people with disabilities. As a new pharmacy it will be fully DDA-compatible. The pharmacy will be designed so that it creates the best environment to deliver its essential and directed contractual pharmaceutical services. The pharmacy and consultation room will comply with all the required standards including the DDA.

Choice and diversity in the neighbourhood

- 1.13 Section 3.80 of the guidance to the regulations should be considered:

"3.80. Primary Care Trusts will also consider the extent to which the application proposes services or means of delivery which will offer greater benefits by closing gaps in the current provision of services within a neighbourhood. Alternatively, it may determine that a community served within the neighbourhood would benefit from improved access and choice resulting e.g. from improved geographical position or

services for that neighbourhood. Examples of this might include improved access to pharmaceutical services for people in deprived areas, to certain minority ethnic groups e.g. through improved language facilities, for people with disabilities, or services for patients with specific local healthcare needs (e.g. respiratory disease in industrial areas, substance misuse).

- 1.14 The proposed site for the pharmacy will meet the unmet need in pharmaceutical provision in the defined neighbourhood, which is evident given the demographics of the locality.

Innovation in service delivery

- 1.15 Apris Medical Services Ltd will be providing a pharmacist-led service. It is also recognised that the RPSGB has radically altered its policy stance towards companies whose directorate includes medical practitioners. and the close working links envisaged between Apris Medical Services Ltd's management team. In the recently published white Paper, Pharmacy in England - Building on Strengths — Delivering the Future, it was stated that in order to deliver a world class pharmacy in the future it required attributes such as integrated services. It described this as integrated working with others in the local health and social care team, e.g. joint asthma clinic with practice nurse or consultant pharmacist, undertaking audit with local GPs of repeat prescription requests, medicines training for care home staff. The applicant believes that the directors' local healthcare experience would enable Apris Medical Services Ltd to deliver on the Department's stated future aim for community pharmacies to 'be well integrated with other health and social care providers and will be part of a local network'. It is also important to note that the directors' of Apris Medical Services Ltd are acutely aware of their responsibilities: that the company should not prejudice a patient's choice of pharmacy, either directly or indirectly.

- 1.16 Apris Medical Services Ltd are committed to developing a fit for purpose pharmacy, that will be capable of meeting the national and local delivery plans of the future, In the White Paper, Pharmacy in England - Building on Strengths — Delivering the Future, it was acknowledged that whilst medicine use reviews were a priority there was room for improvement:

..there remains room for improvement in how patients and the NHS can make better use of medicines. A range of proposals are put forward to improve the targeting of medicines use reviews (MURs) and the health outcomes achieved, to achieve further progress on repeat dispensing and to improve the use of medicines. Proposals are put forward to broaden access to over-the-counter medicines for people in rural areas...

- 1.17 In line with the recent White Paper, Apris Medical Services Ltd, if their application is approved, are determined to develop a world class pharmacy for the future. They intend to develop a consultation room which will be 'Future proofed' as has been documented in the Pharmaceutical Journal, and in line with the diagnostic services advocated in the White Paper so that it has the following facilities:

1.17.1 Computer availability so that the pharmacist to patient medical records and risk assessment tools.

1.17.2 Storage for point of care testing equipment and consumables.

1.17.3 Equipment to ensure safe disposal of clinical waste.

1.17.4 Access to hot and cold water (and waste disposal).

1.17.5 Electric power points.

- 1.17.6 The White Paper states that its aim was to 'improve the targeting of medicines use reviews (MURs) and the health outcomes achieved As result of the working relationships between Apris Medical Services Ltd and the local medical practices, and in accordance with the highest standards of probity, the pharmacy would aim to build on existing local integrated approaches to healthcare delivery; this would result in the opportunity for the provision of enhanced medication use reviews for patients in the neighbourhood, in a convenient, seamless fashion; where possible this would be done in a way that avoided any duplication of visits for patients, or costs for the PCT budget. The applicant would carry out these "MUR-plus" services at the standard MUR tariff. Examples of this type of extra service would be:
- 1.17.6.1 An osteoporosis review: this would entail checking patients' compliance with current treatment, their calcium and vitamin D3 intake and assessing the patients falls risk There is potential, subject to PCT and medical practices approval, for the pharmacist to flag patients suitable to be referred to the local falls service. This would, in effect, offer a risk assessment in the pharmacy. Providing vascular risk assessments for patients on anti-hypertensive treatments which would involve working with the local practices to identify patients with a relatively high risk of having a cardiovascular event who may need additional counselling on life style and medication concordance.
 - 1.17.6.2 Working collaboratively with the local medical practices to carry out asthma and chronic obstructive pulmonary disease reviews on uncontrolled patients.
 - 1.17.6.3 The identification, review and counselling of appropriate patients with diabetes. The pharmacist would monitor blood glucose and blood pressure.
 - 1.17.6.4 Services to specific populations/to meet disease needs.
 - 1.17.6.5 Apris Medical Services Ltd plans to develop a locally focused innovative approach to pharmaceutical services and directed services, utilising the appropriately synergistic relationship between the local medical practices and the pharmacy. Examples of the types services are outlined above.
 - 1.17.6.6 The overall longer-term impact.
- 1.18 Apris Medical Services Ltd believe that the proposed pharmacy is likely to have a very positive long-term impact on the local community in terms of addressing national and local priorities. Apris Medical Services Ltd would contend that the application plans for significantly improved access to pharmaceutical services in the neighbourhood and a more rationale distribution of pharmacies in Cromer.
- 1.19 It is anticipated that the advantageous commercial position of the existing pharmacies will remain financially viable given their access to a busy high street which attracts people from the whole of Cromer and the outlying areas estimated to be in excess of 12,000 people. In addition during the holiday season it is thought that the population of Cromer doubles. Notwithstanding the prescriptions it is estimated that pharmacy income from over the counter pharmacy products would render them viable given the national spend in the UK for GSL medicines and P medicines was estimated to be £1800m by the Office of Fair Trading in 2003. This equates to around £30 per head of population annually.
- 1.20 Other factors which the applicant believes should be taken into consideration when evaluating the long-term impact of our application:

Demographic data

- 1.21 The prescription growth in the local practice has increased significantly over the last few years; the national trend is for prescription volumes to increase at approximately 5% a year. Significantly, the items prescribed by the practice have more than doubled in the last 5 years. This puts additional pressure on the existing pharmacies. In addition the patient list size for the local practice has increased by 22% in the last 5 years. Critically, there are twice as many people aged 65 or over in the locality compared to national averages, who are known to be higher users of pharmaceutical services. There has been no change in the numbers of pharmacies in the town of Cromer for at least 10 years.

Local Authority Plans

- 1.22 Over the next 15 years it is envisaged that there will be approximately 1000 new dwellings built in and around Cromer. There are several planning applications currently in the pipeline, which includes an application for 60 houses within 100 metres of the proposed premises.

Conclusion

- 1.23 Regulation 12 of The NHS (Pharmaceutical Services) Regulations 2005 uses the concept of adequacy and the new criteria of 'reasonable choice' to decide whether an application satisfies the control of entry test.
- 1.24 The current pharmaceutical service provision in the neighbourhood could not be described as adequate in terms of reasonable choice. The demographics of the neighbourhood unequivocally demonstrate an above average need for pharmaceutical services in the locality. The population of Cromer and its surrounding area is likely to increase in the future. The present pharmaceutical service provision in the neighbourhood as described in this document would lead Apris Medical Services Ltd to conclude that on the balance of probabilities this application is both necessary and desirable as defined in The (NHS (Pharmaceutical Services) Regulations 2005.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 16 October 2009 states:

Background

- 2.1 The location of the proposed premises is in a non-controlled locality and no requests had been made for this status to be re-considered. Consequently the application was subject to determination in accordance with regulation 12— the necessary or expedient test.
- 2.2 It was noted that the directors of the company include doctors at Cromer Group Practice, Overstrand Road, Cromer, NR27 0AJ.
- 2.3 The application had been notified to interested parties in accordance with regulation 27 and representations arising from this notification were circulated to the applicant and other parties prior to determining the application.

Previous applications

- 2.4 In November 2006 an application for preliminary consent was made by Healthcare Location Ltd for preliminary consent within a half mile radius of St. Mary's Road & Arbor Road but the applicants failed to provide fitness to practice information and the application was subsequently deemed to have been withdrawn.
- 2.5 In January 2008, an application for preliminary consent was made by United Pharmacies (UK) Ltd at Mill Road, Cromer and granted on 23 May 2008. The proposed site is approximately 1/4 mile from the surgery. An appeal against that decision was dismissed; the preliminary consent was converted to full consent specifying premises at 50 Mill Road but this had expired on 26 September 2009 without the pharmacy opening.

Description of the area

- 2.6 The commercial and retail centre of Cromer is generally contained within the area bounded by Mount Street/Louden Road, Prince of Wales Road, High Street/Church Street. The proposed site and surgery is outside the town centre within the predominantly residential area known as Suffield Park to the east of Norwich Road (A149) which forms the major route into the town from the south. Although this is a predominantly residential area, there is a community hospital (no A&E) in Mill Road and a convenience store and post office at the junction of Mill Road and Crawford Road.
- 2.7 Buses run along Mill Road into the town centre with approximately one bus per hour. Mill Road is very congested with parked cars on both sides.
- 2.8 Approaching Cromer town centre by vehicle from the south along Norwich Road leads to a one way system westbound via Mount Street/Louden Road. Church Street is one way east bound. Vehicles approaching the town centre via Overstrand Road cannot turn into Norwich Road; the route is either via Cromwell Road or Cliff Avenue. There are some roadside parking spaces in the town centre, including in Church Street outside Boots, and pay and display car parks within close to the town centre.
- 2.9 The latest ONS population estimate for Cromer is 7,865.
- 2.10 The North Norfolk District Council Annual Monitoring report 2007-8 describes Cromer as having a strong tourist and retirement character. It is a local centre for retail, local government and health services. In the last five years just 51 dwellings have been built in the whole of the Cromer area. The following information on dwelling completions by year was provided by North Norfolk District Council on 5 August 2009:

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
57	42	33	53	30	11	57	50	34	25

- 2.11 Currently there are 29 dwellings under construction, 166 detailed planning permissions, and 62 outline planning permissions
- 2.12 Current pharmaceutical services

Boots (UK) Ltd, 54-56 Church Street, Cromer NR27 9HH

Overall opening hours: 0845—1330 & 1400—1800 Mon – Fri

Source: ASP records* 0845— 1330 & 1400— 1730 Sat

Contract opening hours: 0900— 1300 & 1400— 1730 Mon, Tue

Source: ASP records* 0900— 1300 & 1400— 1730 Wed – Sat

Directed services Delivery service provided:
Incontinence supplies

Source: NHS Choices: Truss Fittings

Lloyds Pharmacy, 51 Church Street, Cromer NR27 9HH (map ref 2)

Overall opening hours: 0900—1300 & 1400-1800 Mon — Fri

Source: ASP records* 0900 — 1300 & 1400— 1730 Sat

Contract opening hours: 0900—1300 & 1500— 1800 Mon — Fri

Source:A 0900—1200 & 1500—1700 Sat

Directed services Delivery service
provided: Incontinence supplies
Source: NHS Choices Stoma
Truss Fittings

* ASP records — records held by Anglia Support Partnership on behalf of the PCT derived from information provided by pharmacies.

Neighbourhood

- 2.13 The applicant had proposed that the neighbourhood should be regarded as the ward of Suffield Park as an approximation of the 'footprint' of the neighbourhood defined by the intersection of Overstrand Road and Norwich Road, Norwich Road in the west, Overstrand Road in the east and White House Estate in the south.
- 2.14 The United Pharmacies application in 2008 had established the principle of a neighbourhood consisting of the area to the east of Norwich Road. This had been upheld on appeal and there was no evidence of material changes in the intervening period to indicate that this principle no longer applied. Notwithstanding the precise neighbourhood boundaries adopted in 2008 (which, in any event, related specifically to a proposed pharmacy in Mill Road) the Committee was of the view that the neighbourhood proposed by the applicant in this case was broadly reasonable but considered that it should be defined specifically as Norwich Road in the west, Overstrand Road in the north-east, including all roads and properties taking their access from that road, and the extent of the continuously developed area in the south.
- 2.15 The Committee considered that a case might be made for extending the neighbourhood to include some of the residential areas to the west of Norwich Road but were emphatic that it should not include the town centre, which had totally different characteristics.

Consideration

- 2.16 The committee noted that the consent granted to United Pharmacies Ltd in respect of a proposed pharmacy at 50 Mill Road, Cromer had expired and that consequently there were no extant grants for this neighbourhood.
- 2.17 Under regulation 12(2) the Committee was required to consider the extent to which pharmaceutical services and directed services were currently provided in the neighbourhood and whether there was a reasonable choice of services or service provider within the neighbourhood.

- 2.18 The Committee found, as a matter of fact, that there was no such service provision in the neighbourhood and that, consequently, there was not a reasonable choice of services or service provider.
- 2.19 From this the Committee inferred that service provision within the neighbourhood could not be regarded as wholly adequate. However, given that there are pharmacies within the wider town of Cromer, which residents would know the existence of, the Committee concluded that neither could service provision be regarded as wholly inadequate to the extent of requiring approval of this application on grounds of necessity.
- 2.20 The Committee then turned to the question of whether it is was expedient to grant approval in order to secure adequate service provision and in this regard paid particular attention to the accessibility of the existing pharmacies.
- 2.21 The Committee felt that residents would be used to using the town centre pharmacies but in view of the facilities available within the neighbourhood the Committee did not feel that residents would be entirely dependent upon the town centre for their day to day shopping needs.
- 2.22 The surgery and site for the proposed pharmacy can be easily accessed from all parts of the neighbourhood, although it is situated towards the northern end of the neighbourhood. Residents (the bulk of whom live south of the surgery) leaving the surgery with a prescription currently face a further additional journey into the town centre. For those requiring other pharmaceutical services — for example for treatment of a minor ailment — a relatively long journey would be needed to access what the Committee believed should be a locally available service.
- 2.23 Both the existing pharmacies are very close together meaning that services are clustered and concentrated leaving no choice but to travel into the congested town centre where parking is difficult. For pedestrians it is a downhill walk of approximately one mile from the centre of the neighbourhood (and therefore uphill in the reverse direction) and the Committee was of the opinion that this would be a challenge, if not a barrier for elderly and less able people. Although buses run along Mill Road into the town centre they are only at hourly frequencies.
- 2.24 The Committee concluded that access to existing pharmacies from the neighbourhood is at least inconvenient and, on balance, inadequate for the reasons stated in the preceding sub-paragraphs and that grant of the application would remove this inadequacy.

Decision

- 2.25 The Committee concluded that it is expedient to grant the application under regulation 12 in order to secure the adequate provision of pharmaceutical services in the neighbourhood.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 29 October 2009, Lloyds Pharmacy Ltd appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 There are already pharmacies in close proximity to the proposed site that provide an adequate pharmaceutical service to patients and residents. There is no evidence that residents have difficulty accessing pharmaceutical services. The existing pharmacies are adequately accessible and provide an adequate pharmaceutical service.

- 3.2 The PCT refer to a previous application (granted at Appeal on 4 September 2008 ref: SHA/14604) for full consent to United Pharmacies Ltd at Mill Road, Cromer. This site is however about 700 metres from the applicants proposed site and was in a different neighbourhood.
- 3.3 The site by Apris Medical Services Ltd is within the same neighbourhood as the town pharmacies, to which a choice of services exists. Cromwell Road was defined as the neighbourhood boundary for ref: SHA/14604 and the appellant can see no reason why the Appeal Unit should differ from this.
- 3.4 As previously stated the appellant notes that the proposed pharmacy does not propose any services that are not already provided nor does it propose any additional opening hours. Moreover no services are proposed on Saturdays.
- 3.5 The existing Lloyds pharmacy has sufficient capacity to meet the future needs of patients and currently provides the pharmaceutical services the PCT requires. The applicant has provided no evidence in their application of an inadequate pharmaceutical service therefore the appellant respectfully asks that the application be refused and the appeal upheld accordingly.

4 **Summary of 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.

Boots UK Ltd

- 4.1 Boots disagree with the PCT decision to approve the application and their reasoning.
- 4.2 There are two existing pharmacies in Cromer, which are well known by the population and easy to find within the central shopping area of the town. The pharmacies are located approximately 650 metres from the applicant's proposed site along flat terrain, and they offer patients a choice of both provider and services.
- 4.3 The PCT's neighbourhood definition for the application by United Pharmacies at Mill Road, Cromer was agreed at appeal SHA/14604 in September 2008 as Cromwell Road to the north, Overstrand Road to the east, Roughton Road in the west and the limit of the developed area of Cromer to the south. Boots believes that both the existing pharmacies and the applicant's proposed site are within the same neighbourhood..
- 4.4 The Boots pharmacy opens 0845 to 1800 Monday to Friday, 0845 to 1730 on Saturday, and on Sunday 1000 to 1600 from June to September and 1000 to 1300 from October to May. The applicant is not proposing hours of opening that are any different to those already available to patients.
- 4.5 The following Enhanced pharmaceutical services are provided - Supervised Administration Scheme, Care Home & Intermediate Care Services, Home Delivery Service, Emergency Hormonal Contraception, Out of Hours Services. Boots would also be happy to provide any additional services should the PCT identify a need.
- 4.6 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 uphold this appeal accordingly.

Apris Medical Services Ltd (Applicant)

- 4.7 The applicant would like to make representation regarding the appeal in accordance with Regulation 29 of the NHS (Pharmaceutical Services) Regulations 2005, as amended.
- 4.8 The applicant reproduces verbatim their comments in italics as follows:
- There are already pharmacies in close proximity to the proposed site that provide an adequate pharmaceutical service to patients and residents. There is no evidence that residents have difficulty accessing pharmaceutical services. The existing pharmacies are adequately accessible and provide an adequate pharmaceutical service. (Lloyds)*
- 4.9 It is clear from the PCT minutes and from the evidence from SHA/14604 that:
- 4.9.1 The existing pharmacies are opposite each other, with double yellow lines in the one way High Street.
- 4.9.2 They are not in close proximity to the proposed site — 0.7 of a mile away.
- 4.9.3 They do not offer a wholly adequate pharmaceutical service to the neighbourhood so consent for an additional provider is at least necessary.
- 4.9.4 The existing pharmacies are not adequately accessible to patients presenting for medical services at the applicant's site.
- 4.10 The pharmacies are in the electoral ward of CROMER TOWN.
- The PCT refer to a previous application (granted at Appeal on 4 September 2008 (ref: SHA/14604) for full consent to United Pharmacies Ltd at Mill Road, Cromer. This site is however about 700 metres from the applicants proposed site and was in a different neighbourhood. (Lloyds)*
- 4.11 The applicant would dispute the distance between the past and present application sites claimed of 700 metres. The applicant measured the distance of the site of the granted application from their proposed site as no more than 600 metres, less as the crow flies.
- 4.12 There are two electoral wards; Cromer Town on the west side of the town and Suffield Park on the east. They have roughly the same level of population. The two current pharmacies are in the Cromer Town ward, the Apris pharmacy will be in a central area of Suffield Park ward (see map of Suffield Park ward).
- The site by Apris Medical Services Ltd is within the same neighbourhood as the town pharmacies, to which a choice of services exists. Cromwell Road was defined as the neighbourhood boundary for ref SHA/14604 and we can see no reason why the Appeal Unit should differ from this. (Lloyds)*
- 4.13 The application is for an address which is to the South of the latitude of Cromwell Road.
- 4.14 The applicant would dispute that their application was in a different neighbourhood to that of SHA/14604, for the following reasons:
- 4.14.1 The postal address for both the application at Mill Road and the current proposed site in Overstrand Road, are in the postal district and neighbourhood of Suffield Park.
- 4.14.2 The electoral ward of Suffield Pact includes both Mill Road and Overstrand Road. This was confirmed by North Norfolk District Council. The applicant

provides a copy of a map supplied by them showing the Suffield Park ward outlined in red.

4.14.3 People living in Mill Road and Overstrand Road would regard themselves as neighbours and would both state they come from Suffield Park.

4.14.4 The PCT who have intimate knowledge of the area and the past case SHA/14604, agree that the past and current applications are in the same neighbourhood.

4.14.5 It is not logical to exclude the chalet park between Overstrand Road and the sea from the neighbourhood.

As previously stated we note that the proposed pharmacy does not propose any services that are not already provided nor does it propose any additional opening hours. Moreover no services are proposed on Saturdays. (Lloyds)

4.15 The existing community pharmacies are opposite each other in the centre of town. The street is a busy one-way street and there are no more than 10 parking spaces on the street, only 2 of which are for people with disabilities. Larger car parks are regularly full particularly in the summer and there is some distance to walk from all of them to the community pharmacies.

4.16 The two pharmacies regularly close their dispensaries between 1pm and 2pm. Both community pharmacies have gifts, cosmetics etc. close to the front door and the dispensing area at the rear. Lloyds is particularly narrow with a central isle making wheelchair access to the dispensing counter difficult.

4.17 The applicant encloses a letter from Dr Oliver as both a director of our company and as a GP principal confirming:

4.17.1 The collocated surgery hours

4.17.2 His confirmation to the Superintendent Pharmacist Designate, that the pharmacy when open should mirror the surgery's opening hours.

4.17.3 Adoption of standards regarding:

4.17.3.1 regulatory standards.

4.17.3.2 pharmacy mission statement.

4.17.3.3 equality and human rights statement.

4.18 It will be the applicant's intention to give the PCT immediate notice when granted consent of their mirrored hours. Whilst 90 day notice needs to be given of change of supplementary of hours Norfolk, like many PCTs accept notification of increased hours as an informative process rather than an approval process. The applicant would therefore confirm their direct instruction that the pharmacy would open the following hours:

Monday 8.30am to 8pm

Tuesday 8.30am to 6pm

Wednesday 8.30am to 8pm

Thursday 8.30am to 6pm

- Friday 8.30am to 6pm
- 4.19 The collocated Surgery opening hours are;
- Monday 8.30am to 6pm and 6.30pm to 8pm
- Tuesday 8.30am to 1pm and 2pm to 6pm
- Wednesday 8.30am to 6pm and 6.30pm to 8pm
- Thursday 8.30am to 6pm
- Friday 8.30am to 6pm
- 4.20 Additionally, if the collocated Health Centre were to open on Saturdays it would be the applicant's intention to open on Saturdays assuming their hours.
- 4.21 The applicant notes that neither of the existing pharmacies in the town centre have chosen to increase their hours to the surgery's extended hours which came to fruition in December 2009.
- 4.22 It is the applicant's intention to provide pharmaceutical services to Cromer Hospital which is in the same neighbourhood and only 250 metres away.
- 4.23 Cromer Hospital (which is 250 metres from the proposed site) has no in-house pharmacy service. Over the next few years the number of outpatients will rise from 96,000 to 103,000 and many of them will be given prescriptions that they will have to take to a pharmacy.
- 4.24 The applicant understands the surgery "do not see many MURs from either pharmacy" and an advantage of having a pharmacy collocated with the practice means that there will be better medicines management for patients.
- 4.25 The population of Cromer more than trebles during the school holidays and some days during the summer reaches 60,000. The town is surrounded by camping and caravan sites, highly populated and low cost. This year the practice treated 1379 temporary residents, mainly during the summer. There are 6 million visitors to north Norfolk throughout the year and Cromer is the largest seaside town and administrative centre.

Summary

- 4.26 The neighbourhood for the application is Suffield Park ward.
- 4.27 The Apris pharmacy will have excellent parking, easily accessible from all over Suffield Park, the most densely populated area of the town.
- 4.28 The appellant's arguments concerning the non-relevance of SHA/14604 are spurious and do not stand up to geographical scrutiny.
- 4.29 The reasons why the grant of consent was given on appeal in SHA/14604 apply equally to the current application and the applicant would respectfully request the Litigation Authority to follow its past precedent as there are no significant variations between the two applications that would give occasion to consider granting the appeal.
- 4.30 For the reasons given by the PCT and those set out in Apris Medical Services Ltd's application form and in this letter, it is at least expedient to grant the application, and the applicant asks the FHS Appeal Unit to dismiss the appeal.

The applicant's further letter dated 15 December 2009, enclosed a copy map and letter from Cromer Group Practice to the applicant, dated 11 December 2009.

The Committee noted the appellant's further comments in their letter dated 18 January 2010.

The Committee did not take into account the applicant's further comments in their letter dated 20 January 2010.

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 12(1), the necessary or expedient test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted the application was for preliminary consent prior to inclusion in the pharmaceutical list at The Surgery, 48 Overstrand Road, Cromer, Norfolk NR27 0AJ.
- 5.7 The Committee noted the PCT's defined neighbourhood for the proposed pharmacy as described at paragraph 2.14, had been disputed on appeal. The appellant argued the application site was in the same neighbourhood as the existing town centre pharmacies. Further, the Committee had previously decided Cromwell Road was a neighbourhood boundary in respect of United Pharmacies (UK) Ltd's application for preliminary consent prior inclusion in the pharmaceutical list at Mill Road, Cromer NR27 0AD (ref:SHA/14604 – 4 September 2008). Similar observations were made by Boots UK Ltd. In their response to the appeal, the applicant claimed people living in Mill Road and Overstrand Road would state they come from Suffield Park. The Committee noted the various points made regarding neighbourhood and also had regard to its previous decision. The Committee noted in appeal SHA/14604, it had accepted Cromwell Road was the northern neighbourhood boundary of the 'Suffield Park' neighbourhood. However, the appeal against the PCT's determination in respect of neighbourhood had been limited and the Committee's decision was without prejudice to future applications. The Committee did not feel that decision therefore confined its present consideration to the previous neighbourhood determination.
- 5.8 In considering the neighbourhood for the current application, the Committee had regard to information provided by the parties. According to the PCT, the retail centre of Cromer is generally contained within the area bounded by Mount Street, Loudon Road, Prince of Wales Road, High Street, Church Street. The proposed site is not within that area and the appellant had not provided any information to support their assertion that the site is part of Cromer town centre. The Committee noted the PCT's description of the Suffield Park as being predominantly residential. After having considered the information in respect of the application the Committee concluded on balance, that PCT's neighbourhood which was based on logical features in the area, should be adopted for the purposes of determining the appeal.

- 5.9 The applicant was aware of references to new housing developments but given the uncertainty as to time scale and location of some of these, together with the relatively small scale of that within 100metres of the proposed site, the Committee afforded little weight to these developments in determining the appeal.
- 5.10 The Committee had already noted that the neighbourhood is largely residential and the most densely populated part of Cromer. It also noted the applicant's reference to the number of elderly people and those with long term limiting illnesses together with lower than average car ownership levels. The Committee considered these features were supportive of the application.
- 5.11 There is one GP surgery (the applicant's proposed site) and no existing pharmacies in the neighbourhood. The Committee considered the presence of a source of prescriptions was a factor supportive of the application.
- 5.12 The Committee noted limited services in the neighbourhood although considered the convenience store and post office at the junction of Mill Road and Crawford Road were likely to be used by the population during the course of their everyday lives.
- 5.13 The Committee noted the applicant's comment that the proposed pharmacy would also be available to patients attending Cromer Hospital (250 metres away) as it has no in house pharmacy. Given that it had no information regarding the pharmaceutical services requirements of those attending the hospital, the Committee could not regard the hospital as a significant factor in support of the application.
- 5.14 Although aware that Cromer has a significant number of visitors during the tourist season the Committee was not persuaded that the increased population was a significant factor in support of the application being granted.
- 5.15 The Committee noted the bulk of the population in the neighbourhood are located south of the proposed site. The Committee considered the ease with which the population in the neighbourhood are able to access pharmaceutical services outside of the neighbourhood. On appeal, Lloyds argued there was no evidence that residents are having difficulty accessing pharmaceutical services. In their response to the appeal, Boots stated that the two existing pharmacies are well known to the population and easy to find within the central shopping area of the town. Boots added that the pharmacies are 650 metres from the applicant's proposed site along flat terrain. The Committee noted the one way system in the town centre and limited parking opportunities particularly during the tourist season. The Committee noted there is an hourly bus service along Mill Road to the town centre. For those on foot, the PCT had noted a return uphill walk of approximately 1 mile measured from the centre of the neighbourhood. On balance, the Committee considered that the various access factors associated with reaching the existing pharmacies whether on foot, by car or by bus were supportive of the application. The Committee accepted the situation may be less acute for those located nearest the proposed site, but had regard to those people furthest away from the town centre pharmacies for whom a previous pharmacy application had been granted to secure the adequate provision of services (that application became time expired).
- 5.16 The Committee noted the applicant's proposed services and opening hours. In the absence of a pharmacy in the neighbourhood, the Committee considered these would be of benefit to the population.
- 5.17 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing absence of a pharmacy within that neighbourhood with the provision of pharmaceutical services outside the neighbourhood, in particular by way of access and a reasonable choice of provider, given that a purpose of being in that neighbourhood may be to access primary medical services from which pharmaceutical services may be required by the reliant

population, then the Committee determined that pharmaceutical services were not currently secured to the extent that it was at least expedient to grant the application.

6 **Decision**

The Committee was of the view that the proposed pharmacy was expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeal.

Ray Bushell **Appeal Officer**

A copy of this decision is being sent to:
Mr N Morley, Apris Medical Services Ltd – Applicant
Ms C Green, Lloyds Pharmacy Ltd – Appellant
Ms S Payne – Norfolk & Waveney LMC
Mrs K Lockton – Boots UK Ltd
Mr D Thorne – Norfolk PCT