

23rd February 2010

REF: SHA/15533

**APPEAL AGAINST NORTH YORKSHIRE AND YORK PCT
DECISION TO REFUSE AN APPLICATION BY
GORGEMEAD LTD FOR PRELIMINARY CONSENT PRIOR
TO INCLUSION IN THE PHARMACEUTICAL LIST WITHIN
THE VICINITY OF JORVIK MEDICAL PRACTICE,
WOOLPACK HOUSE, THE STONEBOW, YORK YO1 7NP**

1 The Application

By application dated 12th June 2009, Gorgemead Ltd ("the Applicant") applied to North Yorkshire and York Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list within the vicinity of Jorvik Medical Practice, Woolpack House, The Stonebow, York YO1 7NP. In support of the application it was stated:

1.1 The applicant's proposed neighbourhood is as follows:

1.1.1 The A1036 Foss Island Road providing the eastern boundary, down to Walmgate, north along Walmgate to Fossgate, all the way up to the junction of Monkgate and Lord Mayors Walk and then south back down the A1036.

1.2 This neighbourhood does not currently have a pharmacy and patients at the Jorvik Medical Centre do not have any direct access to pharmaceutical services.

1.3 The neighbourhood defined was determined by the PCT and confirmed by the Litigation Authority ref. 11357 when Lloyds tried to relocate their pharmacy on Gillygate to the Jorvik Medical Centre.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 2nd November 2009 states:

Neighbourhood

2.1 The Sub-Committee considered the neighbourhood proposed by the applicant and those defined for previous applications. Although the applicant stated that his neighbourhood had been previously defined by the PCT and confirmed by the Litigation Authority on appeal, members were unable to reconcile this with the appeal documents.

2.2 Members took account of information available from the site visit as well as detailed local knowledge of the area and representations received. The area in and around Walmgate and Navigation Road were across the River Foss and considered to be separate communities with a completely different feel to the proposed location. Members therefore decided that the previously defined neighbourhoods did not accurately reflect the neighbourhood for this application.

2.3 It was agreed that the proposed location was in a neighbourhood which encompassed the centre of York, including the main shopping area and side streets. The City Walls, River Foss and River Ouse formed natural barriers to this neighbourhood and members therefore defined the neighbourhood for the purposes of this application as that shown on the attached map.

Necessary or Expedient (Regulation 12)

- 2.4 Members noted the statement in the application that “This neighbourhood does not currently have a pharmacy...”. However, from the site visit and local knowledge of the area, members confirmed that there was a Boots pharmacy located on Kings Square. This was also confirmed in the response letter received from the LPC. This pharmacy fell just inside the neighbourhood proposed by the applicant and was less than five minutes walk from the proposed location.
- 2.5 In total, there are three pharmacies within the PCT’s defined neighbourhood, all within 0.2 miles of the proposed site. Members noted the services currently provided in the neighbourhood by the existing pharmacies.
- 2.6 Taking into account all of the available information, members considered that adequate provision of services was secured in the neighbourhood by the existing pharmacies and rejected the application.

Summary of Decision

- 2.7 The application by Gorgemead Ltd. has been refused as there is adequate provision of 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 30th November 2009, the applicant appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 Jorvik Medical Practice and the adjacent areas are not the same as the rest of the neighbourhood as defined by the PCT.
- 3.2 The area around Jorvik Medical Practice is quieter with commercial property and new residential developments, some already constructed and some to be developed in the future. This is a diverse contrast to the busy retail environment in the city centre.
- 3.3 The applicant does not believe a patient visiting the Jorvik Medical Practice would find it desirable to go into the city centre for a prescription.
- 3.4 There are three pharmacies in the centre of York, but they are all Boots chemists, the applicant does not believe this offers choice of pharmaceutical services to these patients.
- 3.5 The new housing development has increased the local population. The development will gradually boost the local population by a further 700 homes. This will increase the demand for pharmaceutical services.
- 3.6 The applicant attaches an email from Dana Homer the practice manager at Jorvik Medical Practice showing her support for a new pharmacy within the vicinity of their Medical Practice.
- 3.7 In summary, although the Jorvik Medical Practice is in the same neighbourhood as other pharmacies the applicant feels it is desirable for patients to have easy access to a pharmacy and its services rather than having to travel to the Boots pharmacy within a busy, city centre on a route where the pharmacies are difficult to find. The Practice Manager at the Jorvik Medical Practice has confirmed they are happy for a pharmacy to be located on their premises and the applicant will offer all essential enhanced and advanced funded services together with blood pressure and weight management services. The applicant is aware that currently the Boots chemists within the vicinity do not offer Needle Exchange and Smoking Cessation which are already commissioned services. The applicant would provide these services.

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.

4.1 LLOYDS PHARMACY LTD

- 4.1.1 There is already a pharmacy in the neighbourhood only about 173 yards from the proposed site. It is therefore difficult to see what geographical advantage would be gained by this application.
- 4.1.2 The PCT will have had access to the range and level of service provision by the existing pharmacy provider and has determined those to be adequate.
- 4.1.3 Lloyds submit that the PCT made the correct decision to refuse the application and therefore respectfully ask that the appeal and application be refused accordingly as adequate and accessible pharmaceutical services are already provided in the neighbourhood.

4.2 PHARM-ASSIST (HEALTHCARE) LTD

- 4.2.1 Pharm-Assist would first like to refer the appeal authority to the comments already made regarding this application which were submitted to the PCT on the 25th August.
- 4.2.2 In response to the letter from Gorgemead Ltd dated 30th November 2009, they have now already stated that the application is in the same neighbourhood as other pharmacies (in fact 3 pharmacies within very short walking distance). Boots in Kings Square is in fact 0.17 miles and a walking time of less than 3 minutes from the proposed pharmacy site.
- 4.2.3 The current provision of pharmaceutical services provide ample choice within the neighbourhood and all three pharmacies have a variety of opening times which will meet the needs of the neighbourhood, including early opening, late closing and weekend opening times.
- 4.2.4 The Practice Manager in her email indicated the reason for wanting to co-locate the pharmacy within the surgery is for convenience of patients who are ill and visiting the surgery. The majority of prescriptions (over 80%) are managed by repeats which can be provided and often delivered from alternative pharmacies from the area. Also with the introduction of electronic prescribing which will be rolled out during 2010, all Pharmacies locally will have access to smart cards, and will also be able to benefit from integrated working.
- 4.2.5 All of Pharm-Assists pharmacies have excellent working relationships with surgeries, whether they are within the same practice or even 5+ miles away. Pharm-Assist as a pharmacy group always encourage joint working and have successfully completed projects of formulary, audit and cost effective prescribing with a number of practices, and therefore they refute that only those co-located within a practice can have superior working relationships!

Letter to PCT dated 25th August 2009

- 4.2.6 The applicant has simply defined an area where there is no Pharmacy within the boundaries, but has not considered the full geography and ample choice of pharmaceutical services in the immediate vicinity. There are currently 3 pharmacies within 0.2 miles of the proposed site.
- 4.2.7 Just simply identifying a neighbourhood without current provision is not justification for approving an application. The recent application which went for appeal (SHA/14670), for Pharmaceutical services within the neighbourhood of

Acomb Wood Drive was not deemed necessary nor desirable on appeal, even though there were no current pharmacies within the defined neighbourhood.

- 4.2.8 The applicant has not indicated in the application that there is a gap in pharmaceutical provision in the neighbourhood as defined. The applicant has not given any evidence as to the necessary nor desirable test, that by granting the contract it will ensure current and future provisions of pharmaceutical service.
- 4.2.9 Pharm-Assist are not aware of any complaints from patients of other healthcare professional as to the lack of current pharmaceutical provision.
- 4.2.10 The PCT has not as far as Pharm-Assist are aware indicated that this area requires additional pharmaceutical services.
- 4.2.11 The applicant incorrectly states in the application that patients at the Jorvik Medical Centre do not have direct access to pharmaceutical services. There are currently 12 pharmacies within a mile of the proposed site, many of them offering delivery services.
- 4.2.12 The applicant may have indicated their intent to provide a whole list of additional or enhanced services but there is not currently a shortage of them being provided, and the PCT are not commissioning them all to current providers.
- 4.2.13 It is for the above reasons that Pharm-Assist believe that this application is neither necessary nor desirable to secure the adequate provisions of pharmaceutical service to the neighbourhood and should be rejected.

4.3 NORTH YORKSHIRE AND YORK PCT

- 4.3.1 The PCT note from the letter of appeal that the applicant acknowledges that the Jorvik Medical Practice is in the same neighbourhood as other pharmacies. The locations of the existing pharmacies were considered by the PCT when this application was determined, with the nearest pharmacy being less than five minutes' walk from the Jorvik Medical Practice.
- 4.3.2 The PCT has no further comments to make, but reiterate the reasons for its decision as outlined in the decision notification.

4.4 BISHOPTHORPE ROAD PHARMACY

- 4.4.1 The Jorvik Medical Practice does not have a residential population to serve. Any new city centre developments will no doubt contain young, healthy adults who will never visit the practice. Having received a tour of the practice last year (courtesy of Dana Homer) it became obvious that patients travel into the city centre to access its services. The parking facilities there are woefully inadequate for the staff let alone patients, who obviously park elsewhere in the city centre or use public transport. Therefore any perceived access problems caused by distance between the pharmacy and the practice is at best negligible as patients are using city centre car parks or bus terminals. There are two pharmacies at a distance of 0.1 miles and another 0.2 miles from the surgery and within the same neighbourhood. These pharmacies provide more than adequate access to pharmaceutical services to patients of Jorvik Medical Practice. Therefore Bishopthorpe Road Pharmacy recommend that the appeal is dismissed.

4.5 NORTH YORKSHIRE LPC

- 4.5.1 Firstly, whilst it would be convenient to have a pharmacy in each surgery, it is neither necessary or desirable in the majority of cases and this is no exception.

- 4.5.2 With three pharmacies within 0.2 miles of the proposed site, the pharmaceutical needs of this area are very well served. Boots in Kings Square collect & deliver prescriptions from Jorvik Medical Practice. The walking distance between the pharmacy and the medical practice, is minimal. Taking the route down Spen lane at the back of Barnitts which leads through housing directly to the surgery with no roads to cross, all paved and well lit, takes approximately 3 minutes. There are also a number of other pharmacies within easy reach of the neighbourhood as defined. In addition, there are numerous other pharmacies sited in and around York, with bus links, for example to the three pharmacies at Monks cross.
- 4.5.3 Whilst the three nearest pharmacies are all Boots pharmacies, the services provided differ from pharmacy to pharmacy giving adequate choice. For example, smoking cessation is provided by Boots Coppergate and Boots Kings Square pharmacies whilst both needle exchange and smoking cessation are provided from Boots Coney Street. This is contrary to the statement by the applicant that these services are not available locally.
- 4.5.4 The LPC believe that the housing development referred to (which currently appears to be on hold) would not impact on the ability of the existing pharmacies to provide services, even if it goes to completion.
- 4.5.5 Conclusion
- 4.5.5.1 The committee does not support this appeal.

4.6 GORGEMEAD LTD

- 4.6.1 The applicant would like to reiterate the main points that they made in their letter to the FHS Appeals unit on 30 November 2009, for the above application.
- 4.6.2 These points are:
- 4.6.2.1 The applicant feels that the Jorvik Medical Practice where their application has been made is in a distinctly separate part of the city centre than the rest of the city centre. The main city centre is all commercial property whereas surrounding the Jorvik Medical Practice you get the feeling of being out of the city centre with the practice surrounded by new residential developments.
- 4.6.2.2 The applicant feels that patients visiting the Jorvik Medical Practice would not find it desirable to have to go to the city centre to find a Pharmacy and this would also incur parking costs. The Pharmacies are not easy to find when walking from Jorvik Medical Practice. The applicant believes patients do not therefore have adequate access to Pharmacies in this location.
- 4.6.2.3 There are three Boots Pharmacies within the PCT defined neighbourhood; the applicant believes this offers no choice of pharmaceutical services to the patients.
- 4.6.2.4 In and around the Jorvik Medical Practice there is a lot of new housing development with more to follow, in total 700 homes and this is likely to increase the demand for pharmaceutical services.
- 4.6.2.5 The applicant has enclosed a map showing both their and the PCT's defined neighbourhood for the Appeal Unit's reference.
- 4.6.3 Taking the above points into consideration the applicant urges the Litigation Authority to overturn the PCT's decision to refuse a new contract application on the above site or at least grant an oral hearing.

4.7 BOOTS UK LTD

Neighbourhood

- 4.7.1 Boots agree with the PCT decision to reject the application and their reasoning. Furthermore, Boots accept the PCT definition of the neighbourhood, which is clearly defined by geographical features.

Adequacy

- 4.7.2 There are three existing pharmacies in the neighbourhood with additional pharmacies located nearby in the adjacent neighbourhoods.
- 4.7.3 Boots submit that patients in the neighbourhood have access to a reasonable choice of pharmaceutical services at times to meet their needs. The three Boots pharmacies in the city centre currently provide patients with access to a range of pharmaceutical services seven days a week. The opening times and services offered by Boots' pharmacies are detailed in the table at Appendix A.
- 4.7.4 Boots' pharmacies do provide smoking cessation and needle exchange services and have the resources to provide additional services should the PCT wish to commission them.
- 4.7.5 The applicant is not proposing to offer services or hours of opening that if not already available could not be commissioned from one of the existing pharmacies.
- 4.7.6 The applicant has failed to provide any evidence to suggest that the existing pharmacies in the area are unable to meet the present demand for pharmaceutical services or that these pharmacies will be unable to meet any future increase in demand for such services.
- 4.7.7 There have been no complaints to Boots' knowledge to the PCT or LPC to prove that the provision of pharmaceutical services is anything other than adequate.

Accessibility

- 4.7.8 The appellant has provided no evidence to support their view that a patient of the Jorvik Medical Practice would not find it desirable to go into the city centre for a prescription. The 'city centre' is essentially the neighbourhood of the application and Boots can see no good reason as to why the applicant should come to this conclusion.
- 4.7.9 The Boots pharmacy at Kings Square is located a short distance from the Jorvik Medical Practice. Both Boots pharmacies at Coppergate and Coney Street are also within easy walking distance and time of the surgery. All pharmacies are located well within half a mile walking distance of the surgery taking the most practicable route.
- 4.7.10 The pedestrian journey from the surgery to all pharmacies within the neighbourhood is along level terrain with maintained pavements. The area is pedestrianised in parts and free parking is available in close proximity to the existing pharmacies in the area (see enclosed map – Appendix B).
- 4.7.11 Free prescription collection and delivery services are available from a number of pharmacies in the area including Boots.
- 4.7.12 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Litigation Authority to uphold this appeal accordingly.

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 (or location) 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 desirable 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 PCT's defined neighbourhood as shown on a map, which had been circulated to the parties. On appeal, the applicant argues that the area surrounding the proposed site is different in character to the city centre, specifically that it is quieter with more residential property. In response, the PCT comments that the applicant has acknowledged that Jorvik Medical Practice is in the same neighbourhood as other pharmacies. The Committee was of the view that there was no specific information provided to cause either the PCT or the applicant's suggested neighbourhood to be preferred over the other. However the Committee were not convinced that the applicant's neighbourhood was reasonable given that the area south east of the river had been included and information provided to the Committee suggested there were apparently no crossing points except at the western boundary. The Committee further noted the PCT's comments on this point at 2.2. On this basis, and without prejudice to future consideration, the Committee adopted the PCT's definition of neighbourhood as the city centre.
- 5.7 The Committee noted that the PCT state that the three existing pharmacies within the neighbourhood are within 0.2 miles of the proposed site, with the nearest on Kings Square less than 5 minutes walk and this was not disputed. The Committee noted comments that all three pharmacies are within easy walking distance and further noted comments from Boots that the terrain is level with well maintained pavements and pedestrianised areas in parts. The Committee had regard to the applicant's comments that the existing pharmacies are difficult to find and that patients of the Jorvik medical practice would not find it desirable to venture further into the city centre to use them. The Committee noted however that the pharmacies were located on main streets amongst well-used shopping facilities and took the view that the patients in question were likely to be familiar with the city centre layout and have no difficulty in locating those pharmacies. The Committee saw no information to conclude that there are any barriers to access in respect of existing pharmacies within the neighbourhood.
- 5.8 In view of its findings above, the Committee determined that the application was not necessary and went on to consider whether there was a gap in provision high enough on the spectrum of adequacy to conclude that the application was expedient.
- 5.9 The Committee noted the applicant's comment that the existing pharmacies do not provide Needle Exchange or Smoking Cessation however also had regard to Boots' claim that they do provide these services between their three locations, and would be willing to provide other services that the PCT may wish to commission. The Committee also noted that the application offers no advantage over the existing provision in terms of opening hours.
- 5.10 The Committee noted that there is ongoing housing development in the area, although there are comments to suggest progress is slow. The Committee noted that whilst the

applicant contends that there will be an increase in demand for pharmaceutical services, no information had been provided to suggest that existing pharmacies would not be able to cope if this were to happen.

5.11 The Committee noted the applicant's contention that there is no choice because the three existing pharmacies are all operated by Boots. The Committee was mindful of judicial guidance in that choice is but one factor to be considered in addressing adequacy. The Committee had no reason to conclude that the absence of an alternative provider within the neighbourhood, having regard to the judicial guidance that account may be taken of those elsewhere on the pharmaceutical list, was creating a gap in provision that required securing.

5.12 Having had regard to all of the above factors, the Committee concluded that the applicant had not demonstrated, the onus being on the applicant, that the current provision of pharmaceutical services was less than adequate.

6 Decision

The Committee was of the view that the proposed pharmacy was neither necessary nor expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeal.

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Gorgemead Ltd
North Yorkshire and York PCT
North Yorkshire LPC
YORLMC Ltd
Boots UK Ltd
Bishopthorpe Road Pharmacy
Pathvalley Ltd
The Priory Pharmacy
Lloyds Pharmacy Ltd
Superdrug Stores plc