

APPEAL AGAINST BARNSELY PCT DECISION TO GRANT AN APPLICATION BY H & K HEALTHCARE LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF 220 - 349 PONTEFRACT ROAD, LUNDWOOD, BARNSELY

1 The Application

By application dated 9th March 2009, H & K Healthcare ("the Applicant") applied to Barnsley Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of 220-349 Pontefract Road, Lundwood, Barnsley. In support of the application it was stated:

Background

- 1.1 Enclosed is a map (Appendix 1) of the applicant's proposed neighbourhood boundary which comprises the eastern and southern sides of the Lundwood boundary as defined by Barnsley MBC. The Southern side then extends along Rotherham Road to Burton Road which forms the north/west boundary to the point at which it meets the Lundwood boundary. Most of the population in this neighbourhood is deprived and does not have access to a vehicle (*ref. Barnsley Pharmaceutical Needs Assessment 2005*), therefore will have difficulty accessing services outside this boundary.
- 1.2 The population of this neighbourhood was estimated to be around 6100 from Census of 2001 (4319 Lundwood, 1438 (30% of 4314) from Monk Bretton South and 370 (10% of 3697) from Monk Bretton North); this has now estimate grown to around 7000 with the residential developments in the area and continue to grow.
- 1.3 The majority of dwellings in this neighbourhood are council owned houses with a high percentage of the residents being unemployed, and is one of the most deprived area in Barnsley. It is estimated that less than half the households have a vehicle and has a high concentration of people with limiting long-term illness.

Choice

- 1.4 Currently there is only one pharmacy (Lam's Chemist) located within this neighbourhood therefore patient has no choice in provider of pharmaceutical services. The closest pharmacies outside this area are Lloyds Pharmacy (0.8mile) and Akram ZA Pharmacy (0.9mile). However, considering that most of these patients do not have access to a vehicle, at present they have to access pharmaceutical services either by foot or by public transport. Currently there are no direct buses going from Lundwood to Monk Bretton (Akram ZA Pharmacy) or Stairfoot (Lloyds Pharmacy). A typical return bus journey to and from these pharmacies is at least thirty minutes (not including waiting time, connection and then journey home from bus stop).(Appendix 2) The returned bus fare will cost £5.20, which could present a significant outlay for those in receipt of benefits.
- 1.5 Also the proposed pharmacy will be providing additional new services (see later) therefore offering more choice of services to the population.
- 1.6 The Government specifically set out the reason for the explicit inclusion of 'choice' in the 2005 regulations for the following reasons:
 - 1.6.1 Promote consumer choice and harness the benefit of increased competition.
 - 1.6.2 Improve further the accessibility and convenience of pharmaceutical services.

- 1.7 Therefore choice is part of the overall test of adequacy, especially in areas with a large deprived population relying heavily on public transport; with only one pharmacy where the demand for pharmaceutical care is so high that choice can merit the grant of the application by itself.

Location & Access

- 1.8 The existing pharmacy is located within the Lundwood Medical Centre and not visible from the main road (A628). Access to existing pharmacy from the main road is not straight forward as part of the route does not have pedestrian pavement or dropped kerb, or there are blockades on the pedestrian pavement; which may cause difficulties to children, elderly or disabled patients. (Appendix 4)
- 1.9 With the new surgery opening at Priory Campus, patients from the new surgery will have to walk all the way around the buildings (about 300 meters and via the mentioned non-pedestrian route) and go into Lundwood Medical Centre before accessing the existing pharmacy; once they got their prescription, they then have to make the journey (about 200m via the non-pedestrian route again) back onto the main road before their journey home. (i.e. journey of about 500m before they can start their journey home). Therefore all these points proved the existing pharmacy is not convenient for any new patients from the new surgery, or any existing elderly or disabled patients, especially in poor weather condition.
- 1.10 The proposed location for the new pharmacy is on the parade of many shops in central of Lundwood on A628. The parade of shops consists of:
- 1.10.1 2 x Hairdressers; Betting Shop; Netto Supermarket; Lundwood Social Club; Newsagent; Grocery; Butcher; Dentist; Bakery; 4 x Takeaways; Electrical Shop.
- 1.11 People will use these shops in their daily life so the new pharmacy will not be out of their way; therefore the proposed pharmacy is at the heart of Lundwood residence. The new pharmacy is about 230 meters away from the new surgery and 150 meters from the existing surgery, and it situates within the route home for most patients. It has sufficient parking spaces outside or nearby car park, and is only 100 meters from a bus stop (rather than 200 meters for the existing pharmacy); therefore it is a more desirable location than the existing pharmacy.
- 1.12 Other reasons that the location of the proposed pharmacy is desirable are that 37% of Lundwood's population is age 0 to 15 or over 65 (*ref. Barnsley Neighbourhoods Profiles 2007 - Lundwood (Appendix 3)*), therefore it is a population with many parents with young children or elderly patients, who may be without access to a vehicle. Having a pharmacy in the heart of the village where patients can easily get medical advice and OTC medicines will be a major benefit to the population. In the future, when nationally or the PCT roll out of Minor Ailment Scheme, the population will benefit immensely from having a pharmacy in their local amenities instead of making the journey to the doctor surgeries.
- 1.13 Also the proposed location is about 200m from the village Post Office. With high unemployment in Lundwood, over 50% of adults are receiving some kind of benefits combining with pensioners, majority of the population may access the Post Office on a regular basis. Therefore with close proximity to the Post Office, the new pharmacy can be a prime location for Health Promotion & Education, as well as capturing patients - who may not regularly access their doctor surgery for a range of screening and pharmaceutical services proposed by the new pharmacy (see later).
- 1.14 In Primary Care, about 80% of prescriptions issued are for repeat medications which will, in the future via EPS, reduce the need for patients to visit the surgery. These prescriptions will be sent electronically to the patient's nominated pharmacy, which is likely to be located at the patient's natural destination. In this case, both the

population of the neighbourhood and the patients with repeat prescriptions will choose a pharmacy at their natural daily destination, which for this neighbourhood is at the proposed location, not next to the surgery. Even before the implementation of EPS, the proposed pharmacy will offer a free collection & delivery service which again, will reduce the need for patients to travel to the surgery or existing pharmacy.

Opening Hours

- 1.15 The existing pharmacy (Lam's Chemist) only opens Monday to Friday from 9am to 5:30pm and closed both Saturday and Sunday. With Lundwood Medical Centre opens Monday to Wednesday 8:30am to 6:30pm, Thursday and Friday 8:30am to 6:15pm; so patients are unable to have their prescriptions dispensed in the evening without travelling outside the area. This also means that such a large population of people, who may be without a vehicle, not being able to access pharmaceutical service during weekends or evenings. This neighbourhood has one of the highest emergency admission rate in Barnsley and this could be a contributory factor.
- 1.16 The new surgery at Priory Campus will be opening from 8am to 6:30pm Monday to Wednesday and Friday, and 8am to 8pm on Thursday. It will also be opening on Saturday when the list size increases to certain level. Therefore the current opening hours of the existing pharmacy is clearly not adequate to satisfy the need of the population.
- 1.17 The proposed pharmacy will be opening broadly in line with the surgeries opening hours and in addition opening on Saturdays (see core hours). These opening hours are more than what is currently being provided. These opening hours together with the location will provide much better access and care to the population.

Services

- 1.18 The proposed pharmacy will provide all the Essential, Advanced Services and any Enhanced Services that may be commissioned by Barnsley PCT. In addition, it will also provide Supervised Methadone & Subutex and Needle Exchange enhanced services that are commissioned by the PCT, therefore offering choice to these sensitive patients. Currently, the existing pharmacy does not provide Needle Exchange service therefore it will be a new service to the population.
- 1.19 Repeat Dispensing is an Essential Service that aims to release time for GP, allowing them to have more time to see less stable patients and those with more complex conditions. However, in Barnsley, Repeat Dispensing is not being utilized widely by practices and the proposed pharmacy will make it a priority to work closely with local surgeries and promote this service so that more GP time can be freed up and to improve patient care.
- 1.20 From the Pharmaceutical Needs Assessment (PNA), it demonstrated there is a need in Barnsley for better Access and Capacity of Services, Long Term Condition Management, and Support for Prescribers.
- 1.21 It also points out that CHD & Stroke causes a third of deaths in Barnsley; and a third of Emergency Admissions to hospital. Therefore "*any improvement in management of long-term condition will provide significant improvement in the health of the population.*" This neighbourhood is in Locality 3 which has the highest emergency admission rate, as well as prevalence of CHD in Barnsley'. (*ref. Barnsley Pharmaceutical Needs Assessment 2005*)
- 1.22 Based on these obvious needs to improve patient care in the area, particularly CHD, the proposed pharmacy is willing to offer a CHD risk assessment and prescribing service. The proposed pharmacy is willing to work with the PCT and local surgeries to develop a service where patients will have a Personalized Care Plan and their CHD risk calculated, cholesterol tested, blood pressure measured, treatment reviewed,

monitored and have their medicines prescribed by an Independent Prescribing Pharmacist where necessary or appropriate. Considering the proposed location, this new service will improve access for patients and the management of their long-term conditions, as well as capturing patients who may not usually visit their doctor surgeries. The proposed pharmacy is willing to provide this service for Free for the first year as a pilot, and to demonstrate the benefit of the service before reviewing with the PCT to develop this service long term. This service (or any services relating to CHD assessment or management) is not currently being provided by the existing pharmacy, so this will be a new service to the population. The new surgery is in support of this new service.

- 1.23 From the PNA, 55% respondents to the public questionnaire would like to see their local pharmacy monitor blood pressure and blood cholesterol levels. Less than 12% believe their local pharmacy is currently offering these services. In fact, only 2 of the 43 pharmacies in Barnsley (less than 5%) are currently actually offering these services. (*ref. Barnsley Pharmaceutical Needs Assessment 2005*)
- 1.24 The proposed pharmacy will also offer Free Prescribing Support Service to the new surgery in Lundwood or local surgeries where required. This Service will be provided by experienced Practice Support Pharmacists which should promote evidence based prescribing and help practices or PCT to prescribe more cost-effectively and utilize their budget better. This service is not currently being provided by the existing pharmacy, so this will be a new service to the population/prescribers. The new surgery is also in support of this new service.
- 1.25 From the Joint Strategic Needs Assessment Barnsley, it highlighted that “*Smoking accounts for 1 out of every 7 deaths from coronary heart disease and 3 out of every 10 deaths from cancer*” and “*Eating at least 5 portions (400g.) of a variety of fruit and vegetable a day could reduce the risk of deaths from chronic disease by up to 20%*”. Therefore it is more beneficial to people having easy access to Smoking Cessation and Healthy Life Style Advice. If this application is granted, the proposed pharmacy intends to provide Smoking Cessation Service and Lifestyle/Weight Management Service in the proposed location which is easily accessible and regularly accessed by a deprived population. Lifestyle/Weight Management Service is not currently provided by the existing pharmacy, so this will be a new service to the population. The new surgery is in support of this new service.
- 1.26 From the PNA, 57% of respondents to the public questionnaire believe their local pharmacy should provide advice on healthy lifestyles and only 15% believe their local pharmacy already provides this service. Also over 50% believe their local pharmacy should provide stop smoking advice and support including the provision of NRT (free to people exempt from prescription charges without the need to visit their GP). (*ref. Barnsley Pharmaceutical Needs Assessment 2005*)
- 1.27 Based on statistics in 2007 (*ref. Barnsley Neighbourhoods Profiles 2007 - Lundwood (Appendix 3)*), under 18s pregnancies in the neighbourhood is above both Barnsley and England average. The proposed pharmacy intends to provide services such as emergency hormonal contraception and pregnancy testing, which will be more accessible with the proposed location.
- 1.28 The proposed pharmacy will also offer health screening testing such as for diabetes, so that potential patients with diabetes can be identified earlier. This will be a new service to the population as it is not provided by the existing pharmacy. The new surgery is also in support of this service.
- 1.29 Even though currently the PCT may not have requested the development for some of these services, but from information available and the Pharmaceutical Needs Assessment, these services are necessary or at least desirable, and should be welcomed by the PCT and patients; especially when the Pharmaceutical Needs Assessment demonstrated that the current advanced or enhanced services available

in Barnsley are not fully satisfactory to meet some of these needs. (*ref. Barnsley Pharmaceutical Needs Assessment 2005*)

- 1.30 If the application is granted, the proposed pharmacy has the expertise and is willing to work with the PCT or local surgeries to develop new clinical services that will benefit the population.

Summary

- 1.31 The following points summarise the key findings and suggestions made in this application, which are indicative of the fact that granting this application is necessary, or at least desirable to secure the adequate provision of pharmaceutical services within the neighbourhood:
- 1.31.1 the increasing population of Lundwood putting extra demand on pharmacy services.
 - 1.31.2 the lack of choice and competition with only one pharmacy in the neighbourhood, especially when most the population are without a vehicle therefore heavily dependent on the public transport if they wish to access pharmacy outside this area.
 - 1.31.3 the proposed pharmacy will be providing more choice of services to the population.
 - 1.31.4 questioning the convenience or safety of access to the existing pharmacy, particularly for elderly and disabled patients; the proposed pharmacy will be based at the centre of Lundwood which will be more convenient for all patients, as well as potentially capturing more local residents for pharmaceutical services and health education.
 - 1.31.5 the proposed opening hours, which exceeds core hours and exceeds opening time offered by other pharmacies, will provide better access for patients, particular in evenings and over weekends.
 - 1.31.6 the new pharmacy will be providing a range of health screening testing and additional new services* to existing services, such as:
 - 1.31.6.1 CBD risk assessment and prescribing service with Personalised Care Plans (which includes Cholesterol testing and Blood Pressure Monitoring)
 - 1.31.6.2 Free Prescribing Support Service to local surgeries or prescribers
 - 1.31.6.3 Development of Repeat Dispensing with surgeries as a priority
 - 1.31.6.4 Supervised Methadone & Subutex
 - 1.31.6.5 Needle Exchange*
 - 1.31.6.6 Free Collection and Delivery Service to all patients
 - 1.31.6.7 Smoking Cessation Service
 - 1.31.6.8 Lifestyle/Weight Management Service*
 - 1.31.6.9 Emergency Hormonal Contraception
 - 1.31.6.10 Pregnancy Testing

1.31.6.11 Diabetes Testing*

1.31.6.12 Development of new clinical services that will benefit the population

- 1.32 Finally, the Pharmaceutical Needs Assessment pointed out that "*Barnsley has relatively few community pharmacies, being 15 short of the number expected*". The effect of granting this application would not lead to any pharmacy closure in the area, but would merely increase patient choice of pharmacy and range of services available to improve patient care.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 15th July 2009 states:

- 2.1 Members did not agree with the neighbourhood suggested, a considerable part of which was centred around waste ground and woodland to the eastern side of Pontefract Road. A different neighbourhood was therefore determined. The neighbourhood boundary was defined as: "from the junction where Burton Road meets Pontefract Road (West Green) along Burton Road to Burton Crescent and then turning south along the playing fields at Littleworth until reaching Littleworth Lane and Kitson Drive, continuing south to Rotherham Road, including Cherry Trees Nursing Home, then following the river between Pontefract Road and Grange Road continue along this course until it reaches the sewage works, then travel north adjoining the junction at Pontefract Road and Burton Road".
- 2.2 It was noted that there was already one existing pharmacy in the neighbourhood which was situated within the premises of a GP Practice, however this was not obvious from the outside of the premises and would therefore not attract passing trade.
- 2.3 The overall number of prescription items dispensed by that pharmacy appeared to be high, however members had no evidence to suggest that demand was not currently being met.
- 2.4 In relation to service provision, the applicant did not appear to be proposing services that would not otherwise be provided. The Board was not aware of any plans by the PCT to advertise for the provision of any specific services due to non-provision by existing contractors. Nor was it aware of any complaints relating to the provision of pharmaceutical services in the area. However, Members agreed that current provision was neither wholly inadequate, or totally adequate.
- 2.5 In relation to access, it was noted that the applicant's proposed contracted hours, which included later weekday evenings and weekend cover, would provide extended access to pharmaceutical services in the neighbourhood.
- 2.6 The representations received, all of which were against the application, were taken into consideration however it was felt that no evidence had been provided to support the reasons for objecting.
- 2.7 In view of the above the PCT Board determined that the application be granted as the opening of a pharmacy was desirable, as: -
- 2.7.1 It would offer a choice of provider within the neighbourhood;
- 2.7.2 Accessibility to pharmaceutical services to people in the neighbourhood would be significantly enhanced due to the extended opening hours;

2.7.3 The total population of the community was considered to be large for there to be only one pharmacy;

2.7.4 Current service provision was neither wholly inadequate, or totally adequate.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 6th August 2009, Lam's Chemist appealed against the PCT's decision. The grounds of appeal are:

- 3.1 It is noted that the PCT has not accepted the applicant's suggested neighbourhood and has instead determined a neighbourhood more in keeping with Lam's Chemist's suggestion. It is, however, still Lam's contention that none of the sewage works in the south eastern sector should be included in the neighbourhood even though that should make very little difference to the consideration.
- 3.2 The PCT acknowledges that "*the applicant did not appear to be proposing services that would not otherwise be provided*" and also went on to confirm that they were not "*aware of any complaints relating to the provision of pharmaceutical services in the area*". This confirms that it is not necessary to grant the application and so the PCT went on to consider desirability on the spectrum of adequacy. Lam's Chemists respectfully suggests that the PCT has erred in that subsequent decision and wishes to comment on each of the four points listed in the decision letter:
- 3.3 It is not mandatory that there is a choice of (or indeed even any) provider of pharmaceutical services within every neighbourhood. Consideration of the population from Census data, supported by Lam's dispensing figures should indicate that the demand for pharmaceutical services is such that it would be difficult for the neighbourhood to support two pharmacies and so granting the application will probably not secure any long term choice of providers.
- 3.4 The PCT claims that accessibility to pharmaceutical services would be "*significantly enhanced due to the extended opening hours*". Lam's Chemists disputes that the extended hours can be described as significant and in any case, the PCT is able to direct additional hours if it considers there to be a need. This fact was made plain in Lam's submission to the PCT against the application when Lam's also confirmed that they would be pleased to discuss the need for extra hours if the PCT considered them to be appropriate. Any costs associated with the commissioning of additional hours would be more than offset by the additional costs incurred by establishing an additional pharmacy especially when the Premises Allowance is devolved to PCTs next April.
- 3.5 The PCT stated that "*the total population of the community was considered to be large for there to be only one pharmacy*". Firstly, the PCT must be concerned with the provision of services within the neighbourhood rather than the community and has determined a relatively small neighbourhood (essentially Lundwood) as referred to earlier. In the application, the applicant referred to the 2001 Census data and specifically that the population of Lundwood was 4319. This was included in Lam's submission to the PCT which contradicts their claim that no evidence was provided to support the reasons for objecting. Lam's Chemist's stated and maintains that a population of around 4319 does not merit an additional pharmacy opening especially in such close proximity.
- 3.6 The PCT states that "*the current service provision was neither wholly inadequate, or wholly adequate*". This applies to many areas, but Lam's Chemists has concerns that the PCT also claimed that "*no evidence had been provided to support the reasons for objecting*". Firstly, a well reasoned letter of objection was provided which the PCT seems to be largely discounting and secondly, the PCT seems have overlooked that

the burden of proof rests with the applicant. Lam's Chemists claims that the applicant has failed to discharge that burden and so the application should have failed.

- 3.7 The PCT should have had access to Lam's confidential dispensing data and it is presumed that the Litigation Authority will have also. This should not have led the PCT to the presumption that Lam's overall dispensing level is high, but simply in keeping with the neighbourhood population as supported by the Census data.
- 3.8 The PCT referred to Lam's pharmacy not being obvious to people passing on the main road. Lam's established pharmacy is well known within the Lundwood community, but to enhance Lam's presence for the benefit of passing trade, Lam's have recently replaced the sign on the main road with no less than four high profile signs to promote Lam's pharmacy and highlight its location.
- 3.9 Lam's Chemists would like to point out that there was another pharmacy in the area of the application until around 1993-4 when it closed due to being unviable. Lam's purchased this pharmacy from the previous owner in 1998. At that time, it was located within the surgery, but in very small, cramped accommodation, so approximately five years ago, Lam's moved into a much larger area of the surgery to establish the modern pharmacy from which they now practice. This pharmacy has the full facilities expected of a modern purpose designed pharmacy and Lam's confirm that they have a considerable amount of spare capacity and are also willing to consider providing any enhanced services that the PCT wishes to commission.
- 3.10 Lam's Chemists hopes that the Litigation Authority will allow the appeal and refuse the application which is considered to be neither necessary nor desirable.

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 18th December 2009 a Panel was appointed to hear the appeal which took place on 14th January 2010 at Kendray Hospital Barnsley 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 THE CO-OPERATIVE PHARMACY

- 5.1.1 The Co-operative Pharmacy would wish to support all the comments made by Lam's Chemists and add the following points:
- 5.1.2 The applicant has shown no innovation of service in their application.

- 5.1.3 The only indication from the PCT that they feel that service provision is not totally adequate is with the opening hours. As has already been stated, if the PCT has previously felt that this was a deficiency, they already have the powers to direct the existing pharmacy to increase its hours.
- 5.1.4 The PCT decision letter states that the community was large for there to be only one pharmacy. However the PCT letter also states that there have been no complaints and nothing to suggest that pharmaceutical service demand was not being met.
- 5.1.5 The Co-operative Pharmacy would also point out that choice is only one consideration when determining an application and a lack of choice alone is not sufficient reason to grant a new contract.
- 5.1.6 If the population of Lundwood is 4,319, this is very much in keeping with the national average of one pharmacy for every 5,000 population and does not indicate a need for a second pharmacy.
- 5.1.7 Given the above, The Co-operative Pharmacy requests the Appeals Authority reject the decision of NHS Barnsley and determines that the application is neither necessary nor desirable.

5.2 GORGEMEAD LTD

- 5.2.1 The PCT decision to grant this application if (*sic*) flawed on many points. The appeal letter from Ms Lam outlines these flaws concisely. Gorgemead agree with these points and seek to support them.
- 5.2.2 There have been no complaints to Gorgemead's knowledge, regarding current pharmaceutical services in the area. The PCT decision letter states this as well.
- 5.2.3 The population has not expanded in recent years. There is no evidence that there is a 'large population' - the neighbourhood definition shows a relatively small population (4319 according to Ms Lam) and this neighbourhood has been reduced by the PCT neighbourhood definition compared to the applicants.
- 5.2.4 There is no evidence given by Mr Li or the PCT that there are any gaps in the pharmaceutical services offered by the local pharmacy. If the PCT felt there were any gaps in pharmaceuticals services Gorgemead are sure Ms Lam's pharmacy would be happy to fill these. The PCT say they are not planning to do this, hence Gorgemead cannot see how the PCT can state that services are 'neither wholly adequate, or totally adequate'. Gorgemead would say they are adequate, as the PCT does not see a reason to ask for additional services.
- 5.2.5 High number of prescription is not a criteria for granting of additional pharmacy contracts - pharmacies increase staff and improve dispensing processes to cater for this.
- 5.2.6 Having one pharmacy in a neighbourhood does not mean there is no choice of pharmaceutical services. The local population have pharmaceutical services they can choose to use or not. There are plenty of other pharmacies outside of the neighbourhood. There is a reasonable choice when compared to the size of the population - which is not large.
- 5.2.7 The PCT have not identified access issues. As Ms Lam states the current pharmacies opening hours could be extended if the PCT felt there was need for this, by asking for a 'directed' service for the additional hours. This new

application only offers an additional hour per day and 3 hours on a Saturday. Gorgemead do not believe this offers 'significantly' improved access - 3 hours on a Saturday is not weekend cover.

- 5.2.8 Gorgemead request that the appeal be upheld and that the application be rejected on the grounds that it is neither necessary or desirable to secure the adequate pharmaceutical services for this area.

5.3 CHARLES RUSSELL LLP, ON BEHALF OF H & K HEALTHCARE LTD

Adequacy

Population

- 5.3.1 Ms Lam is incorrect in saying that the current population does not merit a second pharmacy. As the Committee will be aware, it must consider all relevant factors when determining whether an application satisfies the statutory test. As far as population sizes are concerned, there are no set quotas which govern how many people must access pharmaceutical services in a neighbourhood, before a second pharmacy may open. In any event, Charles Russell note that the PCT states in its decision that the number of prescriptions currently dispensed by Lams Pharmacy "appears high", which suggests a significant need for pharmaceutical services already exists within the neighbourhood.
- 5.3.2 Charles Russell also understand that the neighbourhood population is currently expanding due to a new housing development situated between Pontefract Road and Burton Road. Approximately 100 new houses are in the process of being built at the Green Croft development and will be completed within the next year. There is a further new housing development being built by Strata with approximately 35 houses situated near Lund Lane, at the centre of Lundwood, which should be completed by the end of next year.
- 5.3.3 As the applicant explained in its application, the neighbourhood is deprived. Indeed Charles Russell understand that Lundwood is one of the most deprived areas of Barnsley, with its residents falling below the national average both in terms of levels of employment, and life expectancy. The proportion of people suffering from long term illness is also higher than the national average. As the Panel is aware, there is a clear link between deprivation and increased health needs.
- 5.3.4 Furthermore Charles Russell understand that people who live outside the neighbourhood now travel to the newly opened HBP surgery on the Priory campus in order to access general medical services. These people are also likely to require access to pharmaceutical services within the neighbourhood.

Location and Access

- 5.3.5 The PCT is correct in observing that the existing pharmacy is not obvious to people passing along the main road. As a result, people are only likely to access pharmaceutical services there if they have made a specific journey to the Lundwood Medical Centre. If patients from HBP surgery wish to access Lams pharmacy they must walk along the main road; up the driveway and into the car park of Lundwood Medical Centre.
- 5.3.6 Charles Russell understand that for those walking to the pharmacy from the main road, the journey along the driveway into the Lundwood Medical Centre, involves walking along a road which does not have a pavement, and which does not have any streetlights. This makes accessing the pharmacy on foot difficult for patients, particularly the elderly, or disabled and those with young

children. Due to the lack of streetlights, patients who visit the pharmacy after dark (which in winter can be as early at 4pm), may feel vulnerable. Charles Russell attach photographs which show the route people must take from the HBP surgery to the existing pharmacy.

- 5.3.7 The applicant's proposed pharmacy is situated within a parade of shops in the centre of Lundwood. Other shops within the parade include a supermarket, a dentist, a bakery, a butcher and a grocers store, together with Lundwood Social Club, amongst others. The Post Office is also located nearby. As a result, people are likely to visit a pharmacy at this site in order to access pharmaceutical services as part of their day to day lives. Car ownership within the neighbourhood is low, and most people are likely to travel to a pharmacy on foot. However, there are parking spaces situated directly outside the applicant's proposed pharmacy should people wish to access the proposed pharmacy by car.

Hours and Services

- 5.3.8 As the Appeal Panel will be aware, Lam's Chemist opens on Monday to Friday 9am to 5.30pm. It is closed on both Saturdays and Sundays. These opening hours do not mirror those of Lundwood Medical Centre which opens on Monday to Wednesday from 8.30am to 6.30pm, and on Friday from 8.30am to 6.15pm. The new HBP Surgery at Priory Campus opens from 8am to 6.30pm on Monday, Wednesday and Friday and from 8am to 8pm on Thursdays. As the Panel will be aware, the applicant is proposing to mirror the Lundwood Medical Centre opening hours, and will, additionally open on Saturdays, therefore providing extended opening hours to those already provided by Lams Chemist.
- 5.3.9 In her letter of appeal Ms Lam has indicated that she would be willing to open the pharmacy for extended hours, if the PCT wishes. However, Charles Russell are informed by the applicant that when Lundwood Medical Centre is closed the gates in the security fence around it are locked. Therefore, it is unlikely that the pharmacy will be able to open after 6.30pm or during the weekend, even if Ms Lam wished to do so.
- 5.3.10 The PCT was correct in concluding that as result of extended opening hours, accessibility to pharmaceutical services in the neighbourhood will be enhanced.
- 5.3.11 The PCT states that the applicant will not be offering additional services to those already provided by Lam's Chemist. This is not correct. The applicant will provide all enhanced services which have been commissioned by the PCT. This includes needle exchange which is a service which Charles Russell understand is not currently being provided by Lam's Chemist. In addition, the applicant intends providing the enhanced services listed below, if they are not commissioned by the PCT the applicant will provide them free of charge:
- 5.3.11.1 Coronary Heart Disease risk assessment and prescribing service with personalised care plans;
 - 5.3.11.2 Free prescribing support services to local surgeries or prescribers;
 - 5.3.11.3 Development of a Repeat Dispensing Service with local surgeries;
 - 5.3.11.4 Diabetes testing;
 - 5.3.11.5 Free collection and delivery service;

5.3.11.6 Lifestyle/weight management service.

- 5.3.12 Ms Lam has commented on the costs which the PCT would incur in either commissioning additional hours from the existing pharmacy, or in establishing a second pharmacy. Such economic factors do not fall within the factors which must be considered by the Appeals Panel in accordance with the 2005 Regulations, and so should be disregarded.

Choice

- 5.3.13 As the Panel will be aware, at present there is only one provider of pharmaceutical services within the neighbourhood. Therefore, patients in the neighbourhood currently have no choice of provider nor services. The PCT was correct in taking this factor into account when granting the application.
- 5.3.14 In her letter of appeal, Ms Lam states that "it would be difficult for the neighbourhood to support two pharmacies and so granting the application will probably not secure any long term choice of provider". The applicant disagrees with this statement and in any event, as indicated above, such economic arguments are not relevant and should be disregarded.

Conclusion

- 5.3.15 Finally, Charles Russell understand that in its Pharmaceutical Needs Assessment, the PCT has noted that "Barnsley has relatively few community pharmacies, being 15 short of the number expected".
- 5.3.16 For the reasons stated above, the current provision of pharmaceutical services in the neighbourhood is not wholly adequate. It is, therefore, at least desirable that the application be granted and Charles Russell respectfully request that the PCT's decision be upheld, and the appeal dismissed.

5.4 BOOTS UK LTD

- 5.4.1 The PCT's decision letter would suggest that:
- 5.4.1.1 current demand for services in the neighbourhood is being met by the existing pharmacy.
 - 5.4.1.2 the applicant was not proposing services that would not otherwise be provided.
 - 5.4.1.3 the Board have not been made aware of any complaints relating to the provision of services in the area.
- 5.4.2 There has been no evidence that would indicate an inadequacy in the existing services or that the location of the proposed pharmacy would significantly improve access for patients.
- 5.4.3 The application has been granted on the basis of additional hours of opening, which the appellant has suggested could be directed from the existing pharmacies should a need be identified. The PCT have also stated that the application would offer a choice of service provider. Patients do have a choice of additional pharmacy providers in the adjacent neighbourhoods, a choice which may be considered reasonable given the proximity of these pharmacies and the size of the population.
- 5.4.4 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.

5.5 BARNESLEY LPC

- 5.5.1 Prescription volume which “appeared to be high” as stated by NHS Barnsley is not a valid reason to grant a contract.
- 5.5.2 Choice of provider, whilst desirable, is also not a compelling reason for the granting of a contract.
- 5.5.3 As Mrs. Lam states, efforts have been made recently to enhance the presence of the pharmacy for the benefit of passing trade.
- 5.5.4 As the LPC stated before, the extended hours proposed by the applicant would not significantly enhance accessibility to pharmaceutical services, and the existing pharmacy could easily extend its opening hours if it was thought to be necessary.
- 5.5.5 Current service provision appeared to be adequate according to NHS Barnsley, and the proposed pharmacy was not aiming to provide services over and above those already provided by the existing pharmacy.
- 5.5.6 Taking these points into account the Committee felt that the appeal should be upheld, as there were no compelling reasons provided by the applicant for the granting of a new contract.

5.6 BARNESLEY PCT

- 5.6.1 The appellant disputes that the extended hours can be described as significant and that, in any case, the PCT is able to direct additional hours if it considers there to be a need. The core hours of H & K Healthcare Ltd would provide additional access to pharmaceutical services within the neighbourhood from 8.30 am to 9.00 am and 5.30 pm to 6.30 pm, Monday to Friday and also provide a Saturday service between 9.00 am and 12 noon. This amounts to an additional 10½ hours access to pharmaceutical services in the neighbourhood every week. The PCT has not stated that it is essential that additional access is required, hence it has not directed that extra hours be provided by the existing pharmacy, however it does consider that the additional access would be of benefit to the community and therefore is desirable.
- 5.6.2 In relation to the population of the neighbourhood, the estimated 2006 population figure obtained by the PCT from Barnsley Borough Metropolitan Council for Lundwood was 4556.
- 5.6.3 It has been noted that, since the PCT’s decision to approve the application, Lam’s Chemists has erected a sign, sited outside the Medical Centre premises, to make it visibly obvious to persons living within the neighbourhood that a pharmacy is situated within the building. Without this sign the PCT had felt that it may not be apparent to persons within the neighbourhood, specifically those that had not had cause to visit the Medical Centre, that there was a pharmacy situated there and at which pharmaceutical services could be accessed.

6 Further comments

6.1 LAM’S CHEMIST

- 6.1.1 It is noted that Barnsley PCT found the applicant’s proposed additional opening hours to be desirable rather than necessary and this may well be due to the fact that neither the established Lundwood Medical Centre or the new branch surgery inside the Priory Campus open on a Saturday. If the PCT

felt strongly about the desirability for additional hours even though not feeling that there is enough need to merit commissioning them, it is felt that this should have been included within their PNA.

- 6.1.2 It is gratifying to note that the PCT has acknowledged the provision of improved signage (not shown in the photographs provided by the applicant) which removes one of the criteria for having granted the application.
- 6.1.3 The applicant claims that Lam's Chemist may not be able to open for additional hours (if the PCT commissioned them when Lundwood Medical Centre was closed) due to the perimeter gates being locked, but this is most certainly NOT the case. Lam's Chemist have keys to the gates and have used them to open the pharmacy to dispense urgent prescriptions outside normal hours.
- 6.1.4 Lam's Chemist would like to thank the applicant for providing the photographs which, with a little explanation may help to clarify the situation and upon which Lam's Chemist should be able to comment.
 - 6.1.4.1 Photograph 1 shows the new Priory Campus (beige bricks with dark windows) which houses the HBP branch surgery and the short journey along Pontefract Road to the junction with Littleworth Lane. This road has pavements, a light controlled pedestrian crossing and is well lit.
 - 6.1.4.2 Photograph 2 shows the junction of Pontefract Road with the beginning of Littleworth Lane. Again, there are pavements and lighting.
 - 6.1.4.3 Photograph 3 shows a car coming along the driveway from Lundwood Medical Centre into Littleworth Lane.
 - 6.1.4.4 Photograph 4 is a similar view of the same driveway taken with different camera settings.
 - 6.1.4.5 In these last 2 photographs:
 - 6.1.4.5.1 Lam's Chemist is located to the right of the green cross which can be seen on the Medical Centre building.
 - 6.1.4.5.2 A lamp post is located outside the Medical Centre and shines along the driveway for the benefit of patients visiting the surgery and pharmacy alike.
 - 6.1.4.5.3 The footpath with safety bollards is also clearly visible along the driveway.
 - 6.1.4.5.4 Motorists have the benefit of a large dedicated car park within the perimeter fence which is accessed by travelling along the driveway and turning left immediately in front of the Health Centre.
 - 6.1.4.5.5 The new Priory Campus can clearly be seen above the Lundwood Medical Centre building. Lam's Chemist are currently in discussion to have an existing gate in the boundary fence between Lam's Chemist and the Priory Campus opened for public access.
 - 6.1.4.5.6 The pavement on Littleworth Lane is again clearly visible to the left of the driveway.

- 6.1.5 From the above explanation of the photographs, the immediate proximity of the new Priory Capus branch surgery with Lam's Chemist will be apparent as will be the ease of access for pedestrians on pavements along well lit streets in contrast to the applicant's claims.
- 6.1.6 The Litigation Authority should also be made aware of the fact that the new housing referred to has actually replaced some older council housing as part of the regeneration that the area is undergoing.
- 6.1.7 It is understood that the H & K Healthcare Ltd applicant (Mr Ken Li) works for Barnsley PCT and provides prescribing advice to the HBP GP Practice that has opened the branch surgery in the Priory Campus. It is therefore a source of concern to hear PCT claims that dispensing at Lam's Chemist appears high. No doubt the Litigation Authority will have access to that commercially sensitive confidential data and be able to decide for itself whether such claims are justifiable. In any event, the Lam's Chemist pharmacy is a modern purpose built unit and has considerable spare capacity.
- 6.1.8 There has been a modest increase in dispensing since the Priory Campus HPB branch surgery opened. The applicant's representative states, that this HBP surgery caters for people "who live outside the neighbourhood". Most of those people will have access to other pharmacies, but some of them are accessing Lam's Chemist without any apparent problem.
- 6.1.9 Lam's Chemist already provides many of the services that the applicant proposes and are willing to consider any others that the PCT wishes to commission.

7 Evidence at the Appeal

7.1 Mr K Li (H & K Healthcare)

- 7.1.1 He confirmed his definition of neighbourhood as set out on page 79 of the case papers. This was based upon the local authority's definition of Lundwood.
- 7.1.2 The new surgery within his neighbourhood would attract the population of the triangle of houses that the PCT had excluded from their neighbourhood.
- 7.1.3 The neighbourhood comprised a mixture of housing including newly built housing and overall it was nearly the most deprived part of Barnsley. The population scored less than average figures for both employment and life expectancy and half the population had no access to a vehicle.
- 7.1.4 It was at least desirable that his application should be granted.
- 7.1.5 The PNA had identified a need for CHD management, control of substance misuse, education in sexual health and a reduction in emergency admissions to hospital.
- 7.1.6 The new HBP surgery had opened in April 2009 and the patient list size was growing. Reference was made to a letter from the practice manager suggesting that the patient list size would increase from approximately 1,000 to 6,000 within the next five years.
- 7.1.7 The current prescribing figures seemed high so it was thought there was need for a second pharmacy. By way of an example during the course of 1 month recently XXXX items had been prescribed. The figures had been obtained under "freedom of information" provisions.

- 7.1.8 The population of the neighbourhood was expanding. One hundred new houses had recently been completed and another 135 were being constructed. It was thought that the population of the neighbourhood was now 5,300. 37% of the population were younger than 16 or older than 65.
- 7.1.9 The only pharmacy in the neighbourhood, Lams was situated back from the main road and could only be accessed by a private driveway with no pavement. Wheelchair access was dangerous and there was no proper street lighting. It was doubtful if the access gates leading to the pharmacy could be opened on a regular basis.
- 7.1.10 With regard to pharmacies outside the neighbourhood there was no direct easy bus service to most of them.
- 7.1.11 He had secured premises from which to open. It was currently a takeaway near the Netto supermarket. It would be easy for people who had use of a car to access the proposed pharmacy as car parking was easily available. However, car ownership was low and most people would walk. The proposed pharmacy was only 100 metres from a bus stop.
- 7.1.12 The Lams pharmacy was only open until 5.30pm during weekdays. This was despite the fact that the two doctors surgeries opened later than that. There were no pharmacy services within the neighbourhood during the weekend. The proposed pharmacy would offer an additional 10 ½ hours during which a pharmacy service would be provided.
- 7.1.13 Needle exchange was the only commissioned service not offered by the current Lams pharmacy.
- 7.1.14 The proposed pharmacy would offer a number of services that were not commissioned including CHD risk assessment (which caused 1/3 of emergency hospital admissions). Diabetes, Cholesterol and Blood pressure management and monitoring, cost effective prescribing, free collection and delivery, life style and weight advice, a stop smoking service, repeat dispensing and MUR's. It was pointed out that Lams pharmacy had only carried out 19 MUR's over a specified period and had not carried out any at all for several months.
- 7.1.15 There was only one pharmacy within the neighbourhood at present so there was no choice which would promote competition.
- 7.1.16 He confirmed that he currently worked for the PCT and was also a consultant to the HBP doctors practice offering prescribing support. He had access to confidential dispensing and other figures but had not used the figures within his application.
- 7.1.17 He was aware that the Lundwood practice had three different surgeries only one of which was situated within the neighbourhood. The prescribing figures provided for that practice related to all three surgeries but he submitted that the other two surgeries were only satellites.
- 7.1.18 He agreed that the distance from his proposed pharmacy to the existing pharmacy would be 150 metres.
- 7.1.19 He accepted that there were lights in the private driveway leading to Lams pharmacy but he submitted that these were not always illuminated.
- 7.1.20 He also accepted that there was a partially pedestrianized walkway within the driveway.

- 7.1.21 He also accepted that part of the neighbourhood was being regenerated and that some of the new houses being built replaced older housing.
- 7.1.22 It was confirmed that the PNA had not been updated since 2005.
- 7.1.23 He maintained that the new pharmacy would help to reduce emergency admissions by virtue of the fact that the pharmacist would be able to advise the local population who would otherwise attend the accident and emergency department.
- 7.1.24 He accepted that there were two 100 hour pharmacies within the vicinity, that a free collection and delivery service operated in the neighbourhood and that bus travel for the over 60's locally was free.
- 7.1.25 All the non commissioned services that were being offered would be provided free of charge.
- 7.1.26 At first the pharmacy would only employ one pharmacist namely himself.
- 7.1.27 In closing he summarized by saying that the existing provision was not adequate owing to:
- a) poor access to other pharmacies
 - b) there was an unmet need for a needle exchange service
 - c) the low number of MUR's being offered elsewhere.
 - d) the increase in population locally and the number of people coming from outside the neighbourhood in order to access medical services.
- 7.1.28 The question of choice should also be given some weight owing to the deprived nature of the population and the mobility problems that it suffered.

7.2 Mr Reilly (PCT)

- 7.2.1 The PCT had followed a set procedure for determining if a new contract was necessary. The factors listed in regulation 12 had been considered. It had been determined that at the time of the application the provision was neither wholly adequate nor wholly inadequate.
- 7.2.2 The PCT went on to look at access to the Lams pharmacy and at that time (before the recent signs had been erected) it was considered that access was rather restricted.
- 7.2.3 Opening hours had also been considered and the hours offered by Lams were limited compared with those offered by the applicant.
- 7.2.4 The PCT had no plans to commission any further services.
- 7.2.5 It was thought that the applicant would have a more visible presence.
- 7.2.6 If it was decided to commission more services the PCT would approach existing providers so the offer for further services by the applicant carried little weight.
- 7.2.7 As regards choice the PCT was aware that a single provider in a neighbourhood could be considered reasonable.

- 7.2.8 The size of the neighbourhood population was taken into account and it was thought that there was a relatively large population for just one pharmacy.
- 7.2.9 It had been decided that a new contract was desirable. This was not in response to an identified need and it was appreciated that the PCT could have directed another pharmacy to offer longer hours. It was noted that the existing pharmacy, Lams, would open longer hours to match the doctors surgeries but this had not yet been implemented.
- 7.2.10 The PCT had faced a choice as whether or not to ask Lams to extend their hours and services or to accept the new application.
- 7.2.11 Lundwood had a high underdoctored figure. It was noted that the new surgery would be attracting new patients and it was thought that the patients who would register there would be mobile and would come from outside the neighbourhood.

7.3 Mr M Greenwood (for the Appellant)

- 7.3.1 It was considered that the existing provision within the neighbourhood was wholly adequate or nearly so.
- 7.3.2 Mr Lo had owned the Lams pharmacy for nearly 12 years. In that time he had relocated the pharmacy within the doctors surgery.
- 7.3.3 The panel were urged to ignore the weather conditions on the day of the site visit in so far as they affected access as the conditions were extraordinary.
- 7.3.4 He accepted the PCT definition of neighbourhood but would wish to exclude the sewage works.
- 7.3.5 Monk Bretton was a separate neighbourhood on top of the hill. It had its own surgery and pharmacy. Accordingly he accepted that the population was approximately 4,500 but might be slightly more.
- 7.3.6 Many of the new developments referred to by the applicant involved regeneration of existing properties so there was no new population. Further, any new houses were not going to create sufficient increase in population for the application to become necessary nor desirable.
- 7.3.7 The PCT had erred in referring to dispensing figures. The correct test involved looking at evidence if any suggesting that Lams could not meet demand or a potential increase in demand. There was no evidence at all suggesting Lams could not meet the current or future demand for services. Further there was no unmet need or demand.
- 7.3.8 With regards to choice, this was a subcategory of the main test and was not a test in itself. How much weight to put on choice was at the discretion of the decision maker. Many neighbourhoods had one or no pharmacies and in these neighbourhoods pharmacies outside the neighbourhood often provided an adequate service.
- 7.3.9 It was correct that MUR's at the Lams pharmacy had been suspended for a time but they had now resumed and they had been proactively marketed. The only commissioned service not offered at Lams was needle exchange. For a long time the Lams pharmacy were the only pharmacy in Barnsley who provided it but little support was given to the pharmacy and the staff were assaulted by customers requiring this service so a decision had been taken not to provide it any longer leaving it up to the Drug and Alcohol Team to

provide it. If adequate support were to be provided by the Drug and Alcohol Team in the future then needle exchange would be considered again.

- 7.3.10 The hours offered by Lams pharmacy were Monday until Friday 9am till 5.30pm. These hours were offered in response to the demand for provision. If the pharmacy was aware of demand outside these hours then the pharmacy would open.
- 7.3.11 It was pointed out that both Tesco and Asda had 100 hour pharmacies operating near to the neighbourhood.
- 7.3.12 Variations in the recorded evidence relating to the opening hours of local surgeries were highlighted. The late opening of local surgeries generated very few late customers after 5.30pm.
- 7.3.13 The figures used by the PCT in their decision were based upon a PNA that was four years old. Since the PNA had been prepared other pharmacies had been opened and the neighbourhood had changed.
- 7.3.14 With regards to access, it was acknowledged that the signs advertising Lams pharmacy were not there at the time of the PCT decision but this was a de novo hearing.
- 7.3.15 Mr Lo was continuing to negotiate over the gates in the fence. The pedestrian gate could be opened at certain times during the day when school children were not likely to use it. The main driveway gate could be opened at times when the surgery was closed. The pharmacy was separately alarmed and could be opened independently from the surgery.
- 7.3.16 It was straightforward to access the pharmacy from the new HBP surgery. Pavements were in good condition and there was a perfectly good footpath along the private driveway from the main gates to the door of the pharmacy. There was also adequate lighting including lights fixed to the side of the adjacent buildings.
- 7.3.17 Collection and delivery services were available free of charge and unrestricted throughout the neighbourhood.
- 7.3.18 Slightly more than 1/3 of the prescriptions received at Lams came from other surgeries from that of which the pharmacy formed part.
- 7.3.19 The appellant was not aware of any complaints regarding provision of services within the neighbourhood.
- 7.3.20 There was also a gate in the fence behind the pharmacy which led onto the car park serving the Campus building where the HBP doctors practice was based. Negotiations were underway for this gate to be left open thus affording direct access to Lams Pharmacy.
- 7.3.21 In closing he pointed out that not every neighbourhood needed to have a pharmacy. The service offered by pharmacies outside the neighbourhood also had to be taken into account, in particular the pharmacy at Tesco which was not open at the time of the PCT decision.
- 7.3.22 It was pointed out that the application had not received any support from third parties other than the new doctors practice and of course the applicant was employed by that practice.
- 7.3.23 The applicant would be creating a supply led demand.

7.4 Mr T Bisset (Barnsley LPC)

- 7.4.1 He submitted a written statement of evidence a copy of which is annexed and marked Appendix B.

8 Site Visit

- 8.1.1 There was thick snow on the ground on the day of the panels visit. All the main roads were open and passable but many of the side roads were inaccessible or could only be used with care. Many pavements had not been cleared and in some cases were treacherous to use.
- 8.1.2 The area of Lundwood mainly consists of housing on both sides of the main Pontefract Road leading out of Barnsley in the direction of Cudworth. To the west of this road the land climbs steeply up to Monk Bretton, the two areas being separated by open grassed areas school buildings and playing fields.
- 8.1.3 To the east there is also another large open area partly occupied by sewage works with no through roads crossing the area.
- 8.1.4 The housing is mixed with many council houses or former council houses and some evidence of recent house building including a site at the extreme northerly end of Pontefract Road. The panel also noticed a newly built apartment block in the centre of Lundwood on Pontefract Road but at the time of the site visit all the apartments appeared to be unoccupied.
- 8.1.5 There is a lengthy parade of shops on both the east and west side of Pontefract Road. There are at least three light controlled pedestrian crossings and although the road is busy it is not difficult to cross, in particular by using these crossings. The shops are mainly small local shops including many takeaways but amongst them is a Netto supermarket with an adjacent free car park.
- 8.1.6 All the pavements in the area are of good quality with dropped kerbs at junctions. Although a few of the shops seemed unoccupied and some were advertised "for sale" most of the shops were trading at the time of the panels visit and are clearly well used by the local population. Parking is easily available in front of the shops without charge.
- 8.1.7 Pontefract Road is a main bus route with frequent buses travelling from there into the centre of Barnsley.
- 8.1.8 The application refers to "the vicinity of 220/349 Pontefract Road". The panel measured the distance from the furthest shop/property, 349 Pontefract Road to the nearest pharmacy, Lams pharmacy. This distance was to be measured to be 510 metres. The route is level along well maintained pavements with no obstacles or other obstructions.
- 8.1.9 The Lams pharmacy forms part of a number of non retail buildings situate to the west of Pontefract Road as it dips down from a busy roundabout forming the junction of the A628 and A6333. Amongst other buildings there is a large doctors surgery of which the pharmacy forms part, a children's nursery, Littleworth Court which is an NHS building offering mental health and child protection services and the Priory Campus described below.
- 8.1.10 The surgery and Littleworth Court are situated behind a high metal fence suggesting that security is a problem. Both these buildings are served by large car parks which were congested at the time of the panels visit.

- 8.1.11 There is a sign on Pontefract Road advertising Lams pharmacy. This is clearly directed at pedestrians as it directs pedestrians along a footpath which passes through the fence mentioned above and leads to the back of the doctors surgery. However at the time of the panels visit the gate in the fence was locked. Accordingly, it was necessary to travel along Pontefract Road then a few metres along Littleworth Lane before turning into a gated driveway leading down towards the surgery and its car park. This driveway also serves Littleworth Court mentioned above. Once through the gates there is a pedestrian footpath at one side of the driveway behind bollards and the pharmacy is clearly signposted at the end of the driveway.
- 8.1.12 There is another sign advertising the pharmacy on Littleworth Lane itself which will direct both motorists and pedestrians towards the pharmacy.
- 8.1.13 Lams pharmacy shares a front door with the adjacent surgery. The pharmacy is well appointed.
- 8.1.14 The panel then visited the Priory Campus building which is only a short distance from the pharmacy in a southerly direction along Pontefract Road. This is a large information and resource centre including a café, a large community hall and offices. The campus also includes the newly opened Hill Brow doctors partnership trading as the HBP surgery. The campus is served by a large adjacent free car park. The panel noticed a gate in the car park leading to the Lams pharmacy but the gate was locked at the time of the panels visit and appeared to be rarely used.
- 8.1.15 The panel noticed no industry or other substantial source of employment within the Lundwood area although there are a number of schools and there is a large glass works to the north.
- 8.1.16 The land climbs steeply to the north in the direction of Monk Bretton where there is a branch surgery of the Lundwood doctors practice served by an adjacent pharmacy.
- 8.1.17 The panel were advised that there were also pharmacies in Cudworth to the northeast. The panel also visited the Lloyds pharmacy on the busy junction of the A635 and the A633 to the south of Lundwood, the Tesco 100 hour pharmacy approximately 100 metres from this junction and also the 100 hour pharmacy within the Asda store to the west of Lundwood nearer the town centre of Barnsley.
- 8.1.18 The panel noted that all the roads throughout the area were fairly congested and this made it difficult to access from one area to another, a problem made worse by the topography of the area.

9 Panels conclusions

- 9.1.1 The panel accepted the PCT definition of neighbourhood. This comprised the district of Lundwood. Whether or not the sewage works in the east were included did not affect the outcome of the application. The Panel considered that the triangle of houses in the west that had been included by the applicant in his neighbourhood formed part of the Monk Bretton neighbourhood.
- 9.1.2 Accordingly the neighbourhood had a population of approximately 4,500 which was slowly increasing and it was served at present by a single pharmacy namely Lams which was adjacent to the two doctors surgeries.
- 9.1.3 The neighbourhood was also served by pharmacies in Cudworth and Monk Bretton as well as the Asda pharmacy in the direction of the town centre and the Lloyds and Tesco pharmacies adjacent to the southerly boundary.

- 9.1.4 Apart from the pupils visiting the schools in the neighbourhood it was not thought that there were many visitors to the neighbourhood on a regular basis and although the many shops in the neighbourhood did provide certain services it was thought that the local population would travel out of the neighbourhood on a regular basis, in particular to visit the supermarkets elsewhere within Barnsley.
- 9.1.5 The panel noted that evidence on behalf of Lams pharmacy suggested that there was no demand for pharmaceutical services beyond 5.30pm. However the panel noted that the local surgeries were open later than this during the weekdays and assumed that there would be some if perhaps rather restricted demand. The demand was presumably partly met by the existence of the two 100 hour pharmacies close to the neighbourhood.
- 9.1.6 The panel considered that access to the pharmacy at Monk Bretton was difficult owing to the geography of the area. Access to the Lloyds pharmacy and the Tesco pharmacy to the south of the neighbourhood was easier although it appeared that there was no direct bus service and it was not practical for residents of the neighbourhood to walk there.
- 9.1.7 Apart from the absence of a needle exchange service within the neighbourhood the panel had not identified any unmet need for any essential or enhanced services. The panel accepted the reasons given by Lams pharmacy for not providing this service and noted that a service should be available to the residents of the neighbourhood from the Drug and Alcohol Team itself.
- 9.1.8 The panel noted that the applicant was offering to provide a number of extra non commissioned services but considered the applicant would not be under any contractual obligation to provide these and there could accordingly be no guarantee that they would be provided.
- 9.1.9 The panel were reluctant to support the reasons given by the PCT for granting the application based upon the number of prescriptions being dispensed. The panel did not consider that the Lams pharmacy was unduly busy and there was no suggestion that they could not cope with the existing or any anticipated demand for pharmaceutical services. The panel further did not consider that the size of the population alone within the neighbourhood justified the opening of another pharmacy based upon national statistics for the ratio of the number of pharmacies to the size of the population.
- 9.1.10 The panel had doubts as to the credibility of the evidence given concerning the expected increase in the number of patients visiting the new surgery in the neighbourhood. However, even if the patient list size did increase it was thought that the new patients attending the surgery would be mobile and would not have any difficulty in accessing the existing pharmacy within the neighbourhood or other local pharmacies.
- 9.1.11 It was noted in particular that the applicant had identified the proposed site for the new pharmacy and this was only 150 metres from the existing pharmacy but it was also 150 metres further away from both the doctors' practices. The panel had not had any difficulty in accessing the present pharmacy from further away than that and it was clearly well used by the local population, in particular the patients of both doctors practices.
- 9.1.12 The panel considered that the Lam's pharmacy would be easier to access for pedestrians if the gate in the fence adjacent to Pontefract Road could be regularly opened but the panel acknowledged the reasons why this was difficult to arrange.

9.1.13 For the patients of the new practice within the neighbourhood it would remain equally as easy for them to access the existing Lams pharmacy as it would be to access the new proposed pharmacy at its proposed location.

9.1.14 Taking into account all the above factors the panel concluded that the provision of pharmaceutical services within the neighbourhood was already adequate and it was neither necessary nor desirable to grant the application.

10 **Recommendations**

10.1.1 The panel would accordingly recommend that the appeal be allowed and the decision of the PCT overturned.

Signed.....

A. Tomlinson

I. Conquest

C. Dorking

Dated this

day of

2010

APPENDIX A**ORAL HEARING ATTENDANCE LIST****CHAIR**

Mr Alan Tomlinson

PANELMr I Conquest
Mrs C Dorking**APPLICANT**

Mr K Li

H & K Healthcare

APPELLANTMr S Lo
Mr D Beal
Mr M Greenwood

Lams Chemist

INTERESTED PARTIESMr R D Hill
Mr R T Needs
Mr C Caunce
Mr A Khan
Mr T BissetHills Dispensing Chemist

Gorgemead Limited
Barnsley LPC**BARNSELY PCT**Ms S Bentley
Mr E Reilley
Ms Ann Toy (observing)
Sandy Ross and Kay Garside (administration support)**OBSERVER**

Rachel Hawkins

Family Health Services Appeal Unit