

11 February 2010

REF : SHA/15491

APPEAL AGAINST SOMERSET PCT DECISION THAT THE RELEVANT LOCATION FROM WHICH THE APPLICANT WISHES TO PROVIDE PHARMACEUTICAL SERVICES, AT THE DATE OF THE RECEIPT OF THE APPLICATION BY THE PRIMARY CARE TRUST, ARE IN A RESERVED LOCATION

1 The Application

By application dated 7 June 2009, John Ware Ltd ("the applicant") applied to Somerset Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of High Street, Cannington, TA5.

2 The PCT Decision

The PCT's decision letter (granting the application) dated 9 October 2009 included the following:

- 2.1 The PCT fully considered Regulation 35(2)(a) and (3) and statistics obtained from the Somerset NHS Information Team on 15 June 2009, which had confirmed that the number of individuals on all of the patient lists for the area which is within 1.6 kilometres of the proposed premises, is 2,347.
- 2.2 The Committee fully considered Regulation 35 and especially (3) and examined the number of representations received from members of the public and those from interested parties.
- 2.3 In doing so the Committee noted that there was concern about the possible loss of the pharmaceutical service from the dispensing doctor practice.
- 2.4 The committee was mindful that no such loss of service would occur if the reserved locality status applied.
- 2.5 As the number of individuals on all of the patient lists for the area which is within 1.6 kilometres of the proposed premises is less than 2,750, and the patients on those lists — were not such to be deemed to be similar to, or greater than, might be expected if the number of individuals were 2,750 or more, the Committee determined that the application relates to a reserved location.
- 2.6 The PCT determines that the neighbourhood of Cannington, as shown on a map, is determined to be of reserved location status.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 2 November 2009, the applicant appealed against the PCT's decision regarding Reserved Location status. The letter states:

The applicant wishes to appeal the decision made by Somerset PCT Pharmaceutical Services Sub Committee made on the 24 September 2009 regarding their application. The PCT's decision was erroneous for the following reasons:

- 3.1 Reserved Location- The appellant (John Ware Ltd) has severe doubts as to the methodology used by the Trust in its deliberations and would like to use the right of appeal against such a determination in light of the absence of evidence as to how the numbers were calculated. The Trust base their decision on statistics obtained from the Somerset NHS Information Team on 15 June 2009 which confirmed that the number of individuals on all of the patient lists for the area that is within a 1.6km radius of the proposed premises is 2,347.
- 3.2 This critical miscalculation is then extrapolated to reach the PCT's ultimate conclusion; that Cannington amounts to a Reserved Location. It is this precise juncture that the applicant wishes to challenge.
- 3.3 It is the lack of clarity as to process within the PCT that the applicant is querying. The applicant simply asks that the methodology that the PCT has employed is clarified and the exact figures that they derived, is disclosed e.g. Post code analysis using the Exeter Method if that transpires to be the case. The reason is this would be an accurate analysis of why a fundamental error has been made.
- 3.4 Anybody who has heard of Cannington knows its irrefutably most famous feature is the agricultural colleges that provide exemplary training and qualification to the region's budding farmers, and outdoor enthusiasts of all descriptions.
- 3.5 Cannington has an exceptional feature that has been unrealised by the Trust, This is in the form of two educational establishments of considerable size and repute that receive little or no mention.
- 3.6 The PCT has omitted to include that contribution the Cannington Centre (Cannington College) makes to the village of Cannington and village life in general. It has a high residential population in its own right and attracts many students, staff and visitors on a daily basis.
- 3.7 The Cannington Centre's facilities include a new golf course, equestrian centre, commercially run farm, glass houses covering 1000m², wildlife havens, vineyard and the new animal management centre and activity centre. Many students reside on site, taking advantage of the purpose built accommodation, restaurant and common room (Wikipedia). It is surprising to note that its existence receives scant mention and no material consideration when the calculation pertaining to "Reserved Location" was performed. No mention has been made of the Walled Gardens and Tea Rooms at Cannington College (officially opened in 2009 by HRH the Earl of Wessex, Prince Edward). These attract many visitors and are proving a great success. They are loosely based on the Eden Project in Cornwall.

Subject to regulation 34, the Primary Care Trust shall, when the period for representations has expired under regulation 33 determine whether the premises, or relevant location, from which the applicant wishes to provide pharmaceutical services, at the date of the receipt of the application by the Primary Care Trust, are in a reserved location. In this regulation a "reserved location" means that the number of individuals on all of the patient's lists for the area which is within 1.6km of the premises, or from the relevant location, as the case may be, is less than 2750. As per 'Information for Primary Care Trusts' "A reserved location is an area within 1.6km of the proposed location of the premises (applicants should specify the location as precisely as possible) where the patient population is less than 2,750".

- 3.8 **This means the total patients on all the lists of any primary medical services provider who serve that population. A large component of the neighbourhood's population is missing from the calculation. I shall refer to these missing**

persons as MiPs The latter consist of all students, staff, personnel and visitors who may visit Cannington College and Brymore School in the neighbourhood for whatever reason.

- 3.9 A likewise failure to include persons at the establishment known as Brymore School. Both of the aforementioned institutions are clearly within the neighbourhood boundaries and were mentioned explicitly in my original application. Their contribution towards the lawfully established neighbourhood is conspicuous by its absence also.
- 3.10 Regulation 35, taken together with the definition of “patient lists” in regulation 2 explicitly states that only patients registered with GMS, PMS, or APMS contractors can be taken into account. This applies to all of the MiPs who therefore contribute towards the lawfully established neighbourhood and therefore must be included when performing the calculation as it relates to Reserved Location status.
- 3.11 All of the students and staff are eligible to NHS healthcare and as such are on patient lists at some surgery. Many students and boarders may certainly may not be permanently resident in the area but they do still count towards the lawfully stipulated threshold figure of 2,750 and constitute MiPs. They are therefore registered on a patient list for the area, which is used in the definition of a reserved location. MiPs are excluded from counting towards the total in defining reserved locations without good cause either through error or omission.
- 3.12 MiPs are rightly entitled to use NHS chemists if they should so choose. This also means that they contribute to the area need for pharmaceutical services being similar to that of an area with a population larger than 2,750.
- 3.13 Clearly, this population of students and staff has health needs like any other population and this is no different from the pharmaceutical services needs of much larger populations.
- 3.14 The Trusts very precise figure of 2,347 must inherently have some margin for inaccuracy within tolerable limits. However, the remaining 403 persons required to ‘tip the balance’ is more than made up by MiPs (see section 5.0 for calculation).
- 3.15 Both of these educational facilities received very large grants last year (Cannington Centre £1.9 million and Brymore School £3.4 million respectively) to further enhance and improve their sites including boarding accommodation (source: Brymoreschool.co.uk, Bridgwater College 2007/2008 Annual Report). The latter represent huge cash injections that prove these are serious operations and will continue to be so moving forwards.
- 3.16 Both institutions are expecting to expand and cater for growing numbers of students. It is notable and surprising therefore to observe that their constituent human base receives little or no representation for the purposes of determining the status of the current application. Their will be will a growing dependence on locally available pharmaceutical services.
- 3.17 Bridgewater College and The Cannington Centre: Cannington is home to one of two main sites of Bridgwater College. The total number of students who studied at the College in 2007/08 was 15,922, which represents an increase of 2% on the previous year (student population is rising). The college has two main sites; one In Bridgwater itself and the other in the picturesque setting of Cannington (source: Bridgwater College: Guide to land-based courses 2009). There are also additional outreach centres at Paignton and Yeovil but Bridgwater and Cannington are the main sites.
- 3.18 Student numbers are increasing. The number of full-time college students at Bridgwater College aged 16-18 increased by 8% compared to 2006/07. This number has now increased by 70% in the last six years. Over two-thirds of all students are aged 19 and over and are on further education courses. In 2007-2008 students

achieved a total of 27,806 qualifications and of these 10% were in Land Based Studies namely Agriculture, Horticulture & Animal Care (source: Annual Report 2007-2008) and the majority of the students enrolled on land-based courses study and/or reside at Cannington College.

- 3.19 In total 1430 part-time and full-time students are enrolled on land based courses and routinely use the numerous facilities at The Cannington Centre (source: Bridgwater College, The Cannington Centre). 116 students permanently reside in the College's Residential Accommodation (digs) located at Cannington Court. Additional accommodation is also available and used but for shorter durations for under 18's.
- 3.20 Over 100 staff are employed at The Cannington Centre and these include administration staff, lecturers, teaching staff, auxiliaries, herdsman, labourers, cleaners and grounds men (source: Bridgwater College, The Cannington Centre, Cannington Parish Council, Target Online).
- 3.21 The increasing popularity of land-based courses and student numbers have resulted in major investment in The Land-based Courses, grounds, buildings and facilities (source: Bridgwater College 2007-2008 Annual Report). A number of redevelopment and building projects have taken place since 2008, with almost £2m being spent on new facilities, refurbishment and equipment.
- 3.22 The Walled Gardens of Cannington were completely renovated and reopened to the public, and will now provide a superb learning resource for horticulture students. A new Activity Centre, incorporating a high and low ropes challenge course, and new facilities for additional learning needs students were also opened at Crocker's in Cannington. Major investments were also made in the College's working commercial farm (Rodway Farm). Bridgwater College has invested heavily and a site visit to the numerous facilities at The Cannington Centre are evidence of this. The popularity of courses is set to continue and the student numbers and effects on increased daytime population numbers set to continue to rise.
- 3.23 It is strange therefore that the 100 staff, 116 resident students and at least some quantifiable proportion of the 1430 students who study at Cannington College were omitted from lawfully counting towards the stipulated threshold figure of 2,750.
- 3.24 The trust mention that the "committee noted that there was concern about the possible loss of the pharmaceutical service from the dispensing doctor practice. By this the applicant presumes they meant to say loss of "dispensing service". Dispensing doctors, by definition cannot provide pharmaceutical services and more than a pharmaceutical contractor could legally provide general medical services. The loss of a dispensing service would be more than adequately offset by the provision of a full and comprehensive commissioned pharmaceutical service from a dedicated village pharmacy.
- 3.25 It follows therefore that the Trust may have given undue weight to this erroneous assumption and desired for the dispensing doctor practice to function alongside a pharmacy.

Cannington Centre

- 3.26 In the following chapter the applicant will expand on the numerous popular facilities that are amenable to students and visitors that make The Cannington Centre so popular. It is both a nationally recognised centre of excellence for land-based study courses and a popular tourist and outdoor enthusiasts' destination. All information is taken from The Bridgwater College Prospectus, Web-site and "Guide to Land-based Courses 2009". This is to state to the Appeals Committee that Cannington College and Brymore School have far more to offer than their names suggest. Their appeal is very broad and as such they attract huge numbers of people into the neighbourhood.**

- 3.27 The Cannington Centre was known for many years as Cannington College, which was established in 1921 and had a long-standing reputation as one of the key providers in the land-based education sector. It receives widespread acclaim throughout the South West. In September 2004, Cannington College merged with the local tertiary education provider, Bridgwater College, a move which secured a substantial investment package to significantly improve the provision at the land based centre in Cannington. The countryside location of the Cannington Centre makes it an ideal choice for students wanting to pursue a land-based education. The rural environment creates a calm and relaxed atmosphere, which students find very satisfying and conducive to learning. The teaching facilities comprise a range of purpose-built accommodation within beautifully maintained grounds. The provision is comprehensive and so the student profile is varied in terms of age, gender and background. Combined with the fact that many students opt to live on-site, tutor groups tend to form strong units and many lasting friendships are established.

Rodway Farm

- 3.28 The Commercial College Farm currently extends to over 180 hectares, providing arable, pasture and conservation areas, whilst being home to a number of specialist livestock enterprises. Over £1 million has recently been invested on re-developing the Farm, as it seeks to reposition itself not only as one of the leading dairy farms in the region, but also as **one of the leading providers of agricultural training and education. The dairy is a major supplier to Yeo Valley — a major employer in the area and a nationally renowned producer of yoghurt, bio-pots and organic dairy products. Yeo Valley Organic has become the nations best known organic yoghurt product and the largest by sales. In this regard it contributes to the local and national economy.**

“Students access to these exemplary resources are continuously maximised, with daily access via timetabled teaching, together with practical farm duties which take place throughout the year”.

Dairy Herd

- 3.29 The completion of the new milking parlour in 2008 showcases the latest technology in which up to date recording and computerised monitoring systems enable maximum reproductive and nutritional performance from the herd. Access to this live information allows students to monitor individual cow performance on a daily basis. Further investment is currently taking place, with the installation of new cubicles to set high welfare standards, and out of parlour feeders to continue to maximise efficiency and financial returns. The Holstein milking herd operates at 250, producing an average of 9,500 litres. Recent emphasis on breeding quality replacements will allow a selective retention policy and a closed system to exist.

Sheep flock

- 3.30 The sheep enterprise currently consists of two hundred and fifty ewes of a variety of different breeds crossed with texel rams. Lambing takes place at the end of February through to March to produce finished lambs during the summer and early autumn. The recent introduction of a new computerised flock recording programme in which individual ewe records are kept, enable the analysis of different breeds' ability to produce the right conformation and weight of lamb in the shortest time possible. This in turn will enable the breed most suitable to this farm to be selected for increased production, ease of management and greater profitability. It is anticipated that the input, collection and analysis of this data will further involve students and teaching staff.

Beef

- 3.31 A small beef enterprise operates with a range of different breeds to enable comparison of growth rates and carcass classification. These currently include Aberdeen Angus, British Blue, Charolais, Hereford, Holstein and Limousin. Future projects may also include some small scale Rose Veal production.

Arable and Machinery

- 3.32 The land currently utilised for arable production has a cropping rotation programme in which spring wheat and maize are grown, together with Italian ryegrass and red clover.
- 3.33 A 150 hp tractor with a power boost to 180 hp is used to pull a sub soiler and single pass cultivator to increase work rate and efficiency for seedbed preparation for maize and grass establishment. The second tractor is 130 hp with GPS satellite system fitted to spread fertiliser and spray to accurate bout width of a few centimetres also to increase bout spreading width from 12 to 24 metres therefore cutting fuel and time by half and increasing work rate per hour. Once a basic level of competence has been reached in machinery operations, students go on to utilise the full range of modern equipment in undertaking farm related operations such as ploughing, drilling and mowing, fertiliser application and harvesting.
- 3.34 In addition, several hectares are allocated for student trial plots each year. The current estate management plan enables all students to participate in the maintenance and management of other aspects of the College land, such as fencing, hedge laying, coppicing and dry stone walling.

Walled Gardens and Tea Rooms

- 3.35 Set within the ancient walls of Cannington Court (Residential Wing), these gardens have recently undergone extensive redevelopment and were recently officially opened in 2009 by HRH the Earl of Wessex, Prince Edward. A broad range of teaching zones, classic and contemporary features and glasshouses are contained within a 2.5 acre historic landscape. The gardens are open to the public and include a 'hot' herbaceous border, blue garden, sub-tropical walk, Victorian style fernery, the Bishop's garden and an Australasian Garden. The glasshouses cover 960m² and include seven temperate zones, similar to The Eden Project in Cornwall. The nursery and plant shop are stocked with unusual specimens, grown by the students. These are proving very popular especially amongst locals and visitors. There is a higher than average older population in the South West and The Gardens and Tea Rooms attract many visitors and customers alike.
- 3.36 Opening Times:

Winter opening (from 1 November) Mon - Fri 10am - 4pm (closed weekends)

Summer opening (from 30 March) Daily 10am - 5pm.

Admission Prices

Adult: £3

Family (two adults & two children aged 5-16): £6

Under 5's: free

Children aged 5-16: £1.00

Senior citizen; student; wheelchair user: £2.00

Guided tours £6 per head (includes a hot drink and a piece of cake). Minimum group size-is people. Cannington-grown plants at very reasonable prices for sale in the plant shop. Wheelchair access. No dogs, except guide dogs. The site even has its own bus-stop on campus and opposite the new main entrance.

Cannington Tea Rooms

Winter Opening (from 1 November): Monday - Friday 10am - 4pm.

Summer Opening (from 30 March): Monday - Friday 10am - 4pm, Saturday & Sunday 11am - 5pm.

- 3.37 These are very reasonably priced and are a popular excursion for visitors, seven days a week. The walled garden is the set for many themed events throughout the year such as Halloween Hunts, Story-telling events, Flower and Bird Shows, Santa's Grotto, decoration and rustic handmade goods workshops, sing-songs and Christmas Carols. Many of the facilities and services are currently being developed by Bridgwater College who continue to identify and benefit from revenue sources from this exciting and new development.

Animal Management Centre

- 3.38 This newly opened £2 million facility provides a state-of-the-art setting for studying animal welfare. It provides large theory and practical rooms, whilst housing an extensive animal collection. The Animal Centre is broken down into specialist animal areas. This includes a nocturnal room, exotic and amphibian area and cold and tropical fish tanks. The paddock areas are home to the llamas, a flock of Soay and Shetland sheep, goats and ponies. Students also have access to farm animals and horses to increase their practical experience with large animals. The enterprises include a high yielding dairy herd and brand new milking parlour, beef cattle, calf and replacement stock, sheep flock and breeding pigs.

Veterinary nursing room.

- 3.39 This area is equipped with a range of veterinary nursing equipment, including an x-ray machine, resuscitation dogs and surgical equipment - providing an excellent learning resource for both vet nursing and animal management students. The isolation room provides the opportunity for students to practice methods of isolation and barrier nursing techniques in a real-life situation.

Dog Grooming

- 3.40 The Centre also has a grooming area that is the base for day-release dog grooming courses. This includes leisure courses for those interested in grooming their own pets to nationally recognised qualifications, for those wishing to run their own business. Dogs and cats coming in for grooming stay in the new kennel and cattery block.

Cannington Outdoor Activity Centre

- 3.41 Cannington Outdoor Activity Centre is a brand new facility located on the College campus in Cannington. The course has an extensive low ropes section incorporating 15 activities, and a high ropes section with seven sections, to test both teams and the individual. The high ropes element also includes two climbing walls; a vertical side and a slipped side. The course is available for groups of young people and adults, and sessions can be tailored to suit individuals and groups. This is routinely used as an excellent team-building activity and is hired by corporate clients.

Conference Facilities

- 3.42 Cannington Court Conference Centre is designed to support meetings and events for up to 200 people. The Centre is set in a peaceful rural location and offers in-house catering, free on-site parking, signage, dedicated staff and the latest communication technology.

Equestrian Centre

- 3.43 The Equestrian Centre has excellent resources to study an equine based full-time course or to develop equitation skills. A team of experienced British Horse Society qualified instructors provide the riding tuition. The yard is home to a range of quality schooled horses that cater for all riding abilities. The facilities include an indoor (42m x 22m), outdoor (50m x 40m) arena and two stable blocks that house the horses. College students have the advantage of learning in a busy commercial environment. This provides them with a daily insight into working in this demanding industry. Practical work on the yard forms the basis of the students' experience mixed with theoretical sessions to provide underpinning knowledge. Visits to equine events and shows, such as Olympia, Horse of the Year Show, Badminton, and the Golden Horseshoe Ride, are built in to the programme to support the curriculum but also provide the opportunity for students to access potential employers. Lecture demonstrations and talks by subject specialists help to bring aspects of the curriculum to life.
- 3.44 The yard is a British Horse Society approved riding establishment and can offer specialist instruction in dressage and show jumping and the Equestrian Manager teaches several riding clubs and pony clubs by appointment. The yard also hosts many competitions for local riding clubs. Group riding and jumping lessons are available and we even have 'own a horse/pony days for those who do not have their own horse. Tuition for someone with their own horse can also be arranged. Stable management courses and holiday activities are available; Stables can be rented for the day, or overnight stays if competing in local competitions. A person's own horse can be looked after while they are away on holiday. The latter is hugely popular and attracts riders and enthusiasts from far and wide.

Golf Course

- 3.45 Golf facilities are used for teaching sports turf management and training Golf Academy students. They are also available for use by staff and students at reduced rates and are open to the public. The nine hole, 18-tee course is said to be one of the best in the South West. Fully automated driving range, pitch and putt course, PGA professional tuition, fully stocked pro-shop and clubhouse are also offered.
- 3.46 The fully-operational golf course acts as a wonderful resource for sports turf programmes - rather like a live classroom, where students can learn the basics of turf maintenance operations and develop their confidence in the practical aspects of the job. Students studying at Cannington work within an active and dynamic work environment and have been involved in the following projects:

- 3.46.1 Renovation of bunkers.
- 3.46.2 Renovation and management of greens.
- 3.46.3 Irrigation system operations.
- 3.46.4 Identification of weeds, pests and diseases of turf.

Laboratories

- 3.47 There are four fully-refurbished laboratories designed to service the land-based curriculum, including micro biology, food, soils, crops, ecology, animals, nutrition, biology and chemistry.

Learning Resources Centre

- 3.48 Books may be borrowed (including fiction), course textbooks, magazines, journals, films and music from the College library. National and local newspapers are also

provided. The centre has a useful intranet site with links to on-line databases and websites which will help with research. The centre also offers a free interlibrary loan system if they can't supply books from their stock. If students want to buy books, there is a Book Shop facility. Help desk staff are always available to help find what is needed.

Accommodation

- 3.49 Bridgwater College's Cannington Centre for Land Based Studies provides residential accommodation for students, alongside its academic courses. Any full-time student can apply for accommodation. Priority is given to students studying land-based or other specialised courses, students who live outside a 15 mile radius of the campus and Higher Education students. The onsite accommodation comprises 120 rooms; the majority are single but there are some shared accommodation. Rooms are located across the campus in two main buildings and six additional lodges. All accommodation features security controlled access, CCTV and 24 hour security support.

Under 18s Accommodation - Further Education

- 3.50 Under 18 students are housed in five lodges which are protected by restricted access security fobs. These lodges are mixed sex and house ten students in en-suite bedrooms on two floors. Each lodge has a small common room with TV, microwave, kettle, sink, chairs and a coffee table. The Lodge common room has very basic kitchen facilities which are sufficient for students to prepare breakfast or a snack meal. Each lodge becomes a small community in its own right and good friendships develop between students who might not have met otherwise. Accommodation is provided from Sunday night (after 4pm) until Friday (until 7pm). Under 18 students return home for weekends.

Over 18 Student Accommodation - Further Education

- 3.51 For Further Education students over the age of 18 there is accommodation in the 4-storey Jeanes Hall. The main difference between over-18s and under-18s accommodation is the additional privileges that over-18 students are allowed which include 24 hour access to Jeanes Hall and the provision to stay at weekends if required. Students have a meal card for weekdays to purchase meals in the College restaurant and self cater at weekends. Jeanes Hall has a strong international flavour and can accommodate 50 students. The kitchen on each floor of Jeanes Hall is equipped with stove and oven, fridge, freezer, cooking utensils, crockery and cutlery.

Higher Education Students (Over 18)

- 3.52 Higher Education students can apply for accommodation in Priory Lodge or Exmoor Lodge and can choose between full self-catering or a combination of meal card Monday to Friday and self-catering at weekends. In these Lodges there is a university style ambience for HE students to enjoy. Priory Lodge has en-suite rooms for 16 students and provides full self-catering accommodation, seven days a week. Students have to a kitchen/dining area and common room. The lodge has 24 hour access for students. The rooms all have en-suite bathrooms and are furnished like the other lodges.

Student Common Room

- 3.53 The Student Liaison team makes sure there are plenty of activities, entertainments and events for day and residential students. A typical week might include a disco, inter-lodge sports match, quiz night, karaoke competition and a film night. The Common Room provides comfortable seating, pool and tennis tables, jukebox, refreshments bar, games machines and much more. Cannington Centre students can

also participate in all of the Student Union events organised on the Bridgwater campus.

Student Community

- 3.54 A large and vibrant sub-community exists within the village of Cannington. This has been absent from the PCT's consideration when considering the Reserved Location Status that has been erroneously applied to this application. The above facility receives little or no mention and its voluminous population of staff and students carried no weight when the calculation pursuant to the regulations was performed. Many of the students go on to join the National Farmers Union (NFU) and engage in seasonal functions and events such as The Hunt Ball, The Riphay Scuffle, Tractor Racing and Ploughing Competitions. There is an energy and vibrancy here that is the hallmark of the rural subculture that pervades rustic life in general.

Brymore School

- 3.55 In addition to Cannington College, the staff and students of the local Brymore School too, were omitted from the calculation. Brymore School is a secondary boarding school based in Cannington. It is an upper school which means it has students from 13 to 18 years and currently has 163 boys on the roll including 150 boarders and 65 staff (Wikipedia, Brymore School, Admin Dept Ofsted). The ratio of staff to pupils is much higher and this is consistent with a boarding school. It was established in 1951 by Somerset County Council and provides hands-on learning with an organic farm, walled gardens, greenhouses, and workshops including a foundry and a forge. The farm includes a dairy herd, beef animals, sows, poultry, ewes and lambs. The boarders at Brymore School are accommodated in School House (110) and Cannington House (40). Members of staff with boarding responsibilities undertake supervisory duties on a rota basis throughout the week. New boarding accommodation was built in 2007/2008 following a £3.4million grant from the DfES. Many students graduate from Brymore School and go on to study in HE and FE at Cannington College.

- 3.56 The applicant also asserts that due to the influx of such a high number of staff and students into the village of Cannington, the resultant health needs and thus pharmaceutical needs are consistent with those of a much larger population. This is another reason why reserved location ought not apply in this special case.

Neighbourhood Calculation

- 3.57 Somerset County Council mid-year estimates of the residential (domestic) population of Cannington (excluding the School and College) provide a figure of 2,480. Cannington Parish Council [Target Online) independently verify this figure to be 2,500. For the purposes of brevity I shall use the lower of these two figures.

Cannington domestic population	2,480
Students at The Cannington Centre*	1,314* (Non-Boarding)
Students at The Cannington Centre	116 (Boarding)
Staff at the Cannington Centre	100
Students at Brymore School	163
Staff at Brymore School	65

Total neighbourhood population 4,238

- 3.58 Even if the components above are totalled leaving out the non-Boarding Students at Cannington College*, the figure still exceeds the 2,750 Reserved Location Threshold (total = 2,924). A considerable portion of the non-boarding students will also count towards the lawfully determined daytime neighbourhood population but the applicant will leave it to the committee to arrive at an appropriate integer as no formula exists. Suffice to say the applicant has also not included any visitors to the Equestrian Centre, The Golf Course, The Conference Centre, Activity Centre, The Walled Gardens and Tea Rooms.
- 3.59 The applicant therefore requests that the appeal authority allow this appeal, in order to recognise the health needs of all the individuals within Cannington.

4 **Summary of Representations**

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

Boots UK Ltd

At this time Boots only wish to make the following observations on the neighbourhood calculation submitted at section five of the appeal document:

- 4.1 The figure of 2,480 quoted by the appellant as the Cannington Domestic Population is stated as being a mid-year estimate. It is not purported to be an accurate figure.
- 4.2 It is conceivable that students and staff at the Cannington Centre and Brymore School fall within the domestic/residential population of Cannington and may therefore have been effectively counted twice in the appellant's figures.

Somerset Primary Care Trust

- 4.3 The decision letter from the Somerset Primary Care Trust was dated 9 October and advised that any appeal must be received by the Litigation Authority (Regulation 29(6)(a) within 30 days of the date of that letter i.e. by 8 November 2009.
- 4.4 It is noted that the appeal letter from Mr Punni is dated 2 November 2009 but according to the NHSLA, date stamp, was actually not received by the NHSLA until 9 November 2009.
- 4.5 As is usual practice, the envelope in which this letter was sent would have been retained by the NHSLA. This will confirm the actual date of posting.
- 4.6 It is noted by the Somerset Primary Care Trust that Mr Punni contacted the Deputy Primary Care Contracts Manager by telephone on 3 November and requested a copy of the decision letter as he stated he was in another of his pharmacies that day, and did not have it with him and the appeal deadline was approaching.
- 4.7 This statement is further confirmed by the enclosed copy of an e-mail sent by the applicant on 3 November 2009 to the Deputy Contracts Manager.
- 4.8 The Practice Manager at Cannington Health Centre has advised that in the 12 months to 30 November 2009, 149 people visited the practice and were classed as temporary residents.
- 4.9 To be classed as a Temporary Resident the person needs to be staying in the area for more than 24 hours and less than 3 months.

- 4.10 The majority of these temporary residents who presented at the practice are students returning to the family home during the holidays, and people visiting family in the area.
- 4.11 During the same period one patient registered for 'emergency' treatment, i.e. in the area for less than 24 hours and in need of urgent medical attention.
- 4.12 The Practice Manager at Cannington Health Centre has advised that students at Brymore School and Cannington Co are usually registered with the practice, so would be included within the figure of 2,347.
- 4.13 Regarding the appellant's comments on the data collected by the NHS Somerset Information. The PCT has been advised by NHS Somerset Information (14 December 2009):
- "A map of Cannington is enclosed for your information. The current population (as at November 2009) is 2,527.
- 4.14 The population is taken from the Exeter system demographic download and uses the postal town of each patient's address to calculate the population.
- 4.15 Also using this download the PCT calculate the distance as each postcode area has an Easting and Northing the trust have in their population database.
- 4.16 To begin with the PCT find the postcode of the proposed Pharmacy and get the Easting and Northing for this postcode. The PCT then subtract the Easting and Northing for each individual in the population table, who has a valid postcode, from the Easting and Northing of the proposed Pharmacy to produce an approximate distance.
- 4.17 However, the Easting and Northing are rounded in the national dataset which the PCT have access to which means they cannot calculate the distance perfectly. Any distances under one mile, or between one and two miles is then presented in an excel spreadsheet.
- 4.18 This methodology was also used to calculate the number of individuals on all of the patient lists for the area which is within 1.6 kilometres of the proposed premises. This was shown to be 2,347 as at 15 June 2009.
- 4.19 The Somerset Primary Care Trust during its determination as to whether the application related to a **reserved location** placed very little weight on the **population** figure of 7,470.
- 4.20 The Somerset Primary Care Trust information Team subsequently have advised this figure had been taken off the ward codes rather than the community area.
- 4.21 In view of the above information the Somerset Primary Care Trust request that the NHSLA uphold their decision to approval the application from J Ware Ltd, subject to reserved location status.

Mr N V Morley on behalf of Cannington Health Centre

- 4.22 CHC wish to make the following comments (CHC reproduce the comments by John Ware Ltd (JW) in italics with CHC's responses in normal font):

Reserved Location - The appellant (John Ware Ltd) has severe doubts as to the methodology used by the Trust in its deliberations and would like to use the right of appeal against such a determination in the light of the absence of evidence as to how the numbers were calculated. The Trust base their decision on statistics obtained

from the Somerset NHS Information Team on 15 June 2009 which confirmed that the number of individuals on all of the patient lists for the area that is within a 1.6km radius of the proposed premises is 2,347. (JW)

Correct methodology

This critical miscalculation is then extrapolated to reach the PCT's ultimate conclusions; that Cannington amounts to a Reserved Location. It is this precise juncture that I wish to challenge. (JW)

- 4.23 What critical miscalculation? The appellant has supplied no evidence as to miscalculation.

It is the lack of clarity as to process within the PCT that I am querying. I simply ask that the methodology that the PCT has employed is clarified and the exact figures that they derived is disclosed e.g. Post code analysis using the Exeter Method if that transpires to be the case. The reason in this would be an accurate analysis of why a fundamental error has been made. (JW).

- 4.24 This is not an appeal. This statement presupposes that a fundamental error has been made.

Anybody who has heard of Cannington knows its irrefutably most famous feature is the agricultural colleges that provide exemplary training and qualification to the region's budding farmers, and outdoor enthusiasts of all descriptions. (JW)

- 4.25 Irrelevant to the Regulations.

Cannington has an exceptional feature that has been unrealised by the Trust. This is the form of two educational establishments of considerable size and repute that receive little or no mention. (JW)

- 4.26 Irrelevant to the Regulations.

The PCT has omitted to include that contribution The Cannington Centre (Cannington College) makes to the village of Cannington and village life in general. It has a high residential population in its own right and attracts many students, staff and visitors on a daily basis. (JW)

- 4.27 Irrelevant to the Regulations.

- 4.28 The statutory test is NHS registered patients.

The Cannington Centre's facilities include a new golf course, equestrian centre, commercially run farm, glass houses covering 1000m², wildlife havens, vineyard and the new animal management centre and activity centre. Many students reside on site, taking advantage of the purpose built accommodation, restaurant and common room (Wikipedia). It is surprising to note that its existence receives scant mention and no material consideration when the calculation pertaining to a Reserved Location was performed. No mention has been made of the Walled Gardens and the Tea Rooms at Cannington College (officially opened in 2009 by HRH the Earl of Wessex, Prince Edward). These attract many visitors and are proving a great success. They are loosely based on the Eden Project in Cornwall and many visitors and not just at weekends. (JW)

- 4.29 Irrelevant to the Regulations. The appellant's own figures show that there are fewer than 200 resident students, many of whom are registered with Cannington Health Centre and therefore included in the figure of 2,347 individuals used to determine reserved location status.

Subject to regulation 34, the Primary Care Trust shall, when the period for representations has expired under regulation 33 determine whether the premises, or relevant location, from which the applicant wishes to provide pharmaceutical services, at the date of the receipt of the application by the Primary Care Trust, is in a reserved location. In this regulation a "reserved location" means that the number of individuals on all of the patient lists for the area which is within 1.6km of the premises, or from the relevant location, as the case may be, is less than 2,750. As per information for Primary Care Trusts, "A reserved location is an area within 1.6km of the proposed location of the premises (applicants should specify the location as precisely as possible) where the patient population is less than 2,750". (JW)

The only statutory "test"

This means the total patients on all the lists of any primary medical services provider who serve the population. (JW)

4.30 Correct

A large component of the neighbourhood's population is missing from the calculation. I shall refer to these missing persons as MiPs. (JW)

4.31 Non sequitur

The latter consist of all students, staff, personnel and visitors who may visit Cannington College and Brymore School in the neighbourhood for whatever reason.

4.32 Irrelevant to the Regulations.

A likewise failure to include persons at the establishment known as Brymore School Both of the aforementioned institutions are clearly within the neighbourhood boundaries and were mentioned explicitly in my original application. Their contribution towards the lawfully established neighbourhood is conspicuous by its absence also. (JW)

4.33 Irrelevant to the Regulations.

Regulation 35, taken together with the definition of "patients lists" in regulation 2 explicitly states that only patients registered with GMS, PMS or APMS contractors can be taken into account. This applies to all of the MiPs who therefore contribute towards the lawfully established neighbourhood and therefore must be included when performing calculation as it relates to Reserved Location status.(JW)

4.34 Assumes MiP's exist and are not included in the PCT determination (which CHC do not concede). All the boarders at Brymore School and most of the College resident students are registered at Cannington Health Centre. Many of the staff at both establishments live in the village. All these individuals will have been included in the calculation and are not 'missing'.

All of the students and staff are eligible to NHS healthcare and as such are on patient lists at some surgery. Many students and boarders may not be permanently resident in the area but they do still count towards the lawfully stipulated threshold figure of 2,750 and constitute MiPs. They are therefore registered on a patient list for the area, which is used in the definition of a reserved location. MiPs are excluded from counting towards the total in defining reserved locations without good cause either through error or omission.

4.35 Non sequitur and unproven.

MiPs are rightly entitled to use NHS chemists if they should so choose. This also means that they contribute to the area need for pharmaceutical services being similar to that of an area with a population larger than 2,750. (JW)

- 4.36 Students are renowned for low pharmaceutical services needs. Their needs will be catered for by pharmacies adjacent to their homes if they are not resident in the neighbourhood. If in the 1.6km radius of the vicinity they will be counted in the PCT's determination of figures. Many of the students and staff are part-time and have access to pharmaceutical services elsewhere. Both educational establishments are active in term time only.

Clearly, this population of students and staff has health needs like any other population and this is no different from the pharmaceutical services needs of much larger populations. (JW)

- 4.37 See above answer.

The Trusts very precise figure of 2,347 must inherently have some margin for inaccuracy within tolerable limits. However, the remaining 403 persons required to 'tip the balance' is more than made up by MiPs. (JW)

- 4.38 Margin of inaccuracy (which CHC do not concede) is not in the regulations.

Both of these educational facilities received very large grants last year (Cannington Centre £1.9 million and Brymore School £3.4 million respectively) to further enhance and improve their sites including boarding accommodation. The latter represent huge cash injections that prove these are serious operations and will continue to be so moving forwards. (JW)

- 4.39 Whilst gratifying and interesting, irrelevant to the Regulations. It is evident that the appellant is using information without knowledge or understanding. The grants at Brymore are to replace existing boarding facilities, not to expand capacity.

Both institutes are expecting to expand and cater for growing numbers of students. It is notable and surprising therefore to observe that their constituent human base received little or no representation for the purposes of determining the status of my application. That latter will demonstrate a growing dependence on locally available pharmaceutical services.

- 4.40 Irrelevant and unproven.

Bridgwater College and The Cannington Centre: Cannington is home to one of two main sites of Bridgwater College. The total number of students who studied at the College in 2007/08 was 15,922, which represents an increase of 2% on the previous year (student population is rising). The college has two main sites; one in Bridgwater itself and the other in the picturesque setting of Cannington (source; Bridgwater College: Guide to land-based courses 2009. There are also additional outreach centres at Paignton and Yeovil but Bridgwater and Cannington are the main sites. (JW)

- 4.41 Irrelevant.

Student numbers are increasing. The number of full-time college students at Bridgwater College aged 16-18 increased by 8% compared to 2006/07. This number has now increased by 70% in the last six years. Over two-thirds of all students are aged 19 and over and are on further education courses. In 2007 - 2008 students achieved a total of 27,806 qualifications and of these 10% were in Land Based Studies namely Agriculture, Horticulture & Animal care (Source: Annual Report 2007-2008) and the majority of the students enrolled on land-based courses study and/or reside at Cannington College. (JW)

- 4.42 CHC repeat - students are renowned for low pharmaceutical services needs. Their needs will be catered for by pharmacies adjacent to their homes if they are not resident in the vicinity. If in the vicinity they will be counted in the PCT's determination of figures.

In total 1430 part-time and full-time students are enrolled on land based courses and routinely use the numerous facilities at The Cannington Centre (source: Bridgwater College, The Cannington Centre, 116 students permanently reside in the College's Residential Accommodation (digs) located at Cannington Court Additional accommodation is also available and used but for shorter durations for under 18's. (JW)

- 4.43 Many of the 1430 students enrolled on land based courses are part-time and attend one or two days or evenings a week. Many of the full time students split their time between the Cannington Centre and the main college site in the town of Bridgwater. Both these groups would have easy access to pharmaceutical services at other locations. For medical advice, all students have access to the 'Need a Dad service at Bridgwater College, Bridgwater, TA6 4PZ.

Over 100 staff are employed at The Cannington Centre and these include administration staff, lecturers; teaching staff, auxiliaries, herdsman, labourers, cleaners and grounds men (source: Bridgwater College, The Cannington Centre, Cannington Parish Council, Target Online).(JW)

- 4.44 Their needs will be catered for by pharmacies adjacent to their homes if they are not resident in the vicinity. Many staff are part-time and will be able to access pharmaceutical services at times when they are not at work. If they are resident in the vicinity, as many are, they will be counted in the PCTs determination of figures.

The increasing popularity of land-based courses, grounds, buildings and facilities (Bridgwater College 2007-2008 Annual Report). A number of redevelopment and building projects have taken place since 2008, with almost £2m being spent on new facilities, refurbishment and equipment. (JW)

- 4.45 Irrelevant.

The Walled Gardens of Cannington were completely renovated and reopened to the public, and will now provide a superb learning resource for horticulture students. A new Activity Centre, incorporating a high and low ropes challenge course, and new facilities for additional learning needs students were also opened at Crockers in Cannington. Major investments were also made in the College's working commercial farm (Rodway Farm). Bridgwater College has invested heavily and a site visit to the numerous facilities at The Cannington Centre are evidence of this. The popularity of courses is set to continue and the student numbers and effects on increased daytime population numbers is set to continue to rise. (JW)

- 4.46 Last sentence unproven in the current economic climate.

It is strange therefore that the 100 staff; 116 resident students and at least some quantifiable proportion of the 1430 students who study at Cannington College were omitted from lawfully counting towards the stipulated threshold figure of 2750. (JW)

- 4.47 Students are renowned for low pharmaceutical services needs. Their needs will be catered for by pharmacies adjacent to their homes if they are not resident in the neighbourhood. If in the neighbourhood they will be counted in the PCTs determination of figures. Many of the 1430 students are part-time only and will have access to pharmaceutical services when they are not attending College.

The trust mention that the "committee noted that there was a concern about the possible loss of the pharmaceutical service from the dispensing doctor practice. By

this I presume they meant to say loss of “dispensing service”. Dispensing doctors, by definition cannot provide pharmaceutical services any more than a pharmaceutical contractor could legally provide general medical services. The loss of a dispensing service would be more than adequately offset by the provision of a full and comprehensive commissioned pharmaceutical service from a dedicated village pharmacy. (JW)

- 4.48 Not relevant to statutory test.

It follows therefore that the Trust may have given undue weight to this erroneous assumption and desired for the dispensing doctor practice to function alongside a pharmacy. (JW)

- 4.49 No evidence.

Cannington Centre

Rodway Farm

Walled Gardens & Tea Rooms

Cannington Tea Rooms

Animal Management Centre

Cannington Outdoor Activity Centre

Conference Facilities

Equestrian Centre

Golf Course

Laboratories

(All JW)

- 4.50 An irrelevant tautology of items in paragraph 1. There is no evidence that any of these visitors visit Cannington for medical services.

Accommodation (JW)

- 4.51 The appellant states the number of resident students to be 116, many of whom register at Cannington Health Centre and will have been counted in the PCT's figure. Those who do not register evidently do not have need of medical services in Cannington.

Brymore School (JW)

- 4.52 All the boarders at Brymore School (150 out of 163 students according to the appellant) are registered at Cannington Health Centre and therefore included in the PCT's figure.

I also assert that due to the influx of such a high number of staff and students into the village of Cannington the resultant health needs and thus pharmaceutical needs are consistent with those of a much larger population. This is another reason why the reserved location ought not to apply in this special case (JW).

- 4.53 There is no justification for a special case:

- 4.53.1 Many of the people the appellant considers to be 'missing' are included in the PCT's figure.
- 4.53.2 The bare numbers of staff and students do not reflect the part-time status of many of these people and their ability to access pharmaceutical services elsewhere.
- 4.53.3 Students are known to be low users of pharmaceutical services.

Neighbourhood Calculation (JW)

- 4.54 Even if relevant, there will be double counting. Hence the reliance of the regulations upon NHS registered patients registered to any NHS medical practitioner.

<u>Appellant's figures</u>		<u>CHC comments</u>
Cannington dom pop	2,480	Correct figure 2,347
Students at the CC	1,314	Registered resident students included in the PCT figure. Many are part time and are a low needs group.
Boarding students at CC116		Registered students included in PCT figure.
Staff at the CC	100	Locals included in PCT figure, many are part time.
Students at Brymore School	163	150 boarders all included in PCT figure

- 4.55 CHC also wish to point out a significant error in the letter from the PCT stating the determination of the application. On page 3 it states 'Cannington is a village with a population of 7,470' Even the appellant agrees that the village has a population of about 2,500.
- 4.56 The figure of 7,470 is derived from the population of the ward of Cannington which covers a very much larger area and takes in several other villages including Stogursey, Combwith and Spaxton are all outside of the 1.6km radius from the proposed location. CHC point this out in case it should be picked up during consideration of the appeal,

Summary

- 4.57 The appellant has adduced no credible evidence to cast any doubt on the PCT's determination of reserved location status.
- 4.58 CHC request the appeal be dismissed on the papers.

John Ware Ltd (Applicant/Appellant)

- 4.59 **The applicant is in receipt of new information that further disproves the population figures used to establish "Reserved Location Status" for the neighbourhood and village of Cannington.** The applicant believes the decision was erroneous for the following reasons:
- 4.59.1 Lord Justice Tucker, in his oft cited and famous landmark High Court ruling (High Court (Tucker J), in R v FHSAA ex parte Boots the Chemists 1996, stated "In my judgment, when assessing adequacy, the committee should

have regard to the needs of all those who may be expected to be in (not necessarily resident in) the neighbourhood at any time, and for whatever purpose. The interests of all those who may come to or frequent the neighbourhood should be borne in mind. Therefore in considering adequacy, the committee should give careful consideration to the needs and interests of all the people expected to be in the neighbourhood in the course of their daily lives and the likelihood that they would require pharmaceutical services in the neighbourhood while being in it.”

- 4.60 This sets the legal precedent and lawfully establishes a neighbourhood as comprising everybody within that neighbourhood for whatever reason.
- 4.61 Following numerous and detailed enquiries with Bridgwater College, the owners of Cannington College for Land-Based Studies (ref: Fiona McMillan OBE (principal), Karen Bolton (Senior Systems and Operations Manager), the applicant has detailed figures for the student populations of that facility. Mrs Bolton confirmed that there are 1,042 students on site at Cannington College on a daily basis (weekdays) and 186 staff. The College is currently completing its plans for future years but anticipates that this number will increase as a result of (a) the popularity of its courses and (b) substantial investment in infrastructure, buildings, accommodation and course content (source: Bridgwater College Annual Report).
- 4.62 Mrs Jane Wagner (Information Services Bridgwater College) confirmed that in the 36 weeks since opening, The Walled Gardens at Cannington College had attracted 10,000 visitors! (Information correct at 2 December 2009). The Tea Rooms serve 100 visitors per week. Both of these facilities are proving a big attraction and there is a special bus stop at the College that frequently brings in visitors and students alike. All of the students and visitors were not counted and their numbers did not contribute towards the lawfully established neighbourhood, when the PCT conducted its enquiries.
- 4.63 Mrs Julie Beasley (Secretary to The Head and Clerk to the Governors, Brymore School) again confirmed that Brymore School had 161 pupils and 67 staff in total. There are a minimum of 200 persons on-site on a given weekday and 160 boarders over night. The vast majority of these are not Village residents per se but instead are domiciled within the School and therefore were outside of the scope of the PCT's enquiries.
- 4.64 Mrs Jan Hossent (Head Teacher) at Cannington C of E Primary School confirmed that there are currently 164 pupils in attendance on the school register and 30 staff (source: Ofsted Report, School Prospectus). Of these some 56 pupils live in the surrounding villages and approximately 15 of the teachers do not live locally. Again these persons did not count towards the lawfully established neighbourhood of Cannington.
- 4.65 Thus the appropriate (and accurate) neighbourhood population as defined by judicial review, would be calculated as follows:

Neighbourhood Calculation

- 4.66 Somerset County Council mid-year estimates of the residential (domestic) population of Cannington (excluding the School and College) provide a figure of 2,480. Cannington Parish Council (Target Online) independently verify this figure to be 2,500. For the purposes of brevity the applicant will use the lower of these two figures.

Cannington domestic population	2,480
Students at The Cannington Centre*	1,042

Staff at the Cannington Centre	186
Students at Brymore School	161
Staff at Brymore School	67
Non-Cannington Staff and Pupils at Cannington School	71
Total neighbourhood population	4,007 (excluding visitors)

- 4.67 Thus it can be seen that Cannington is special and quite unique and differs from other villages in that it contains special educational facilities that cater for disproportionately large numbers of visitors, students and staff from outside of the area. These figures need to be determined very carefully after much labour and enquiry as the numbers referred to do not exist in any single or easily identifiable list or census study. This information would not have been available to the PCT informatics department when they received the enquiry from the PCT. All of the sites mentioned lie well within the neighbourhood boundaries as identified in the original application.
- 4.68 Recent high profile developments and announcements herald a potentially huge change to the neighbourhood. This was not known at the time of the initial application. The applicant mentions them here because their impact will be significant and they further lend weight to the fact that the neighbourhood's population will further exceed the 2,750 "tipping point" needed to disqualify reserved location status. The applicant suggests also that this further strengthens the case that Cannington is quite "special" in terms of its daytime population increases and ought in reality to be considered as having health needs commensurate with a much larger village or small town.
- 4.69 EDF Energy held a public meeting on Saturday 28 November 2009 at Cannington Village Hall to announce details of their forthcoming New Build. A new nuclear reactor is intended to be built at Hinkley Point immediately adjacent to the neighbourhood and this will have a great impact on the neighbourhood itself. The scope of the consultation was to seek views on: (1) Proposals for the main power station development at Hinkley Point (2) Associated development that the applicant believes is necessary to support the construction and operation of the power Station (3) Dealing with the impacts on, and potential benefits for the local community.
- 4.70 EDF are proposing to build a large bypass and park and ride facility to service and supply the new reactor site and this includes the erection of some 320 additional dwellings to house site workers, IN THE VILLAGE OF CANNINGTON. It is proposed that the majority of this housing will be permanent. This will increase the population and change the village enormously. The plans include the construction of dwellings on the site of Cannington College to house 120 site workers and these will be offered as student accommodation once work has been completed, Another site is proposed slightly to the south of the college and will provide housing for an additional 200 workers (source: Hinkley Point C - Proposed Nuclear Development, Initial Proposals Summary Document November 2009).
- 4.71 Finally, events have taken a sad and unsavoury turn through an innocent error. Several weeks ago the applicant received an apology from the PCT. The PCT had inadvertently written to Cannington Parish Council (CPC) and invited comments from them as an "interested party". This ought not to have occurred, Instead this request for comments coupled with mooted misinformation re: the applicant's proposed closure of the village store and the likely loss of facilities at the Doctor's Surgery resulted in much anxiety and distress amongst some of the locals. As a result, Cannington Online (Village Website) and The Target (Parish Magazine) mistakenly further spread these rumours as did individual councillors. The outcome has been the

open invitation by the aforementioned agencies encouraging members of the public to write in and appeal against the granting of the pharmacy contract. The applicant trusts the Committee will take this into consideration when reaching their judgement. The applicant has no intention of replacing the village store with a pharmacy but rather in addition to it.

- 4.72 The applicant therefore requests that the appeal authority allow this appeal against the decision of Somerset PCT to designate the village of Cannington as a reserved location. This is in order to recognise the health needs of all the individuals within Cannington.**

5 Further comments

Mr N V Morley on behalf of Cannington Health Centre

- 5.1 CHC would wish to challenge some of the information presented by the appellant in his latest submission dated 11 December 2010.

- 5.2 CHC respond to the appellant's points below:

Points 2 & 3

- 5.3 The numbers stated by Mr Punni for students at Cannington Centre for Land-Based studies and visitors to Cannington Walled Gardens are misleading.

- 5.4 The student numbers did not tally with CHC's experience of actually being in the village. Further conversation with Mrs Karen Bolton at Bridgwater College confirmed that 1,042 students are enrolled on courses at the Cannington Centre but that many of these are part-time students who may only attend for one session a week and that furthermore many of the so-called full-time students actually attend for only 2 or 3 days each week. Finally of course, students and the majority of staff are only present during term time.

- 5.5 Further discussion with Mrs Jane Wagner of Bridgwater College, Cannington Centre has revealed that;

5.5.1 the vast majority of visitors to the Walled Gardens come on organised coach trips, specifically to see the gardens. They get off the coach, visit the gardens, then get back on the coach. They do not spend anytime in the village.

5.5.2 the majority of the visitors come for special events and these generally occur on Saturday and Sunday, most of which time the pharmacy would not be open anyway.

Point 4

- 5.6 As stated in CHC's original representations, all the boarders at Brymore School and most 'domiciled' staff are registered with this practice and have been included in the PCT figure; in any case, many of the staff will be part-time; school hours are not the whole day: the school is only open for 195 days a year.

Point 5

Neighbourhood calculation

- 5.7 The evidence Mr Punni has gathered to challenge the determination is not robust and much of it is irrelevant and should be disregarded.

Point 6

- 5.8 The proposals for a new nuclear reactor at Hinkley Point are, at present, just that, proposals. EDF do not submit their contentious development application until July 2010 and approval, if given, will be sometime long after that. The determination of reserved location should not be influenced by uncertain future proposals.
- 5.9 However, the information given by the appellant is again misleading. He states that 320 additional dwellings are proposed but the consultation document clearly states that the possible option being considered in Cannington is for accommodation with up to 320 beds, including the 120 bed development at the college.
- 5.10 The PCT's Reserved location calculation was based on figures at 15 June 2009. That date was close to the date on which the application was received by the Trust (10 June 2009) The Committee noted the difference in the number of individuals for the purposes of this regulation, was not attributed by the applicant on appeal, to the different dates. The Committee considered it was not prevented from determining the appeal.

6 Preliminary Point

- 6.1 The Committee noted the PCT's query as to whether the letter of appeal had been received within the 30 days time limit allowed in the Regulations. The Committee noted the PCT's decision letter was dated 9 October 2009, the appeal period therefore ended at midnight on 8 November 2009. The letter of appeal envelope bears a Royal Mail post of 6 November 2009. The Committee was therefore satisfied the appeal was made within the statutory times limits.

7 Consideration

- 7.1 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. It also had before it the responses to the Authority's own statutory consultations.
- 7.2 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.3 The Committee had regard to Regulations 35(1) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations") which states:

35. – (1) Subject to regulation 34, the Primary Care Trust shall, when the period for representations has expired under regulation 33 determine whether the premises, or relevant location, from which the applicant wishes to provide pharmaceutical services, at the date of the receipt of the application by the Primary Care Trust, are in a reserved location.

(2) In this regulation –

- (a) subject to paragraph (3), a "reserved location" means that the number of individuals on all of the patients lists for the area which is within 1.6km of the premises, or from the relevant location, as the case may be, is less than 2750: and*
- (b) the "relevant location" means, where the location of the premises from which the pharmaceutical services are to be provided is specified in writing by the applicant before the Primary Care Trust makes its determination, that*

location, and where that location is not so specified, the best estimate the Primary Care Trust is able to make of where those premises may be.

- (3) *Premises, or a relevant location, are not in a reserved location where the Primary Care Trust considers that there are circumstances, including but not limited to the age or degree of infirmity of the individual referred to in paragraph (2), why the extent of use of pharmaceutical services if a pharmacy were to operate from the premises or from the relevant location would be similar to or greater than might be expected if the number of individuals mentioned in paragraph (2)(a) were 2750 or more.*
- 7.4 The Committee noted the applicant had provided some information and arguments relevant to the necessary or desirable test. However, the Committee was not required to consider that test in its determination of the current appeal.
- 7.5 The Committee noted the PCT's reference to possible loss of doctors dispensing in connection with its determination of Reserved Location. The Committee was mindful however, that loss of doctor dispensing is not a relevant consideration.
- 7.6 The Committee noted the PCT's decision letter indicates the Trust had calculated the number of individuals on all patient lists for the area within 1.6 km of the proposed premises as 2,347 as at 15 June 2009. In their response to the appeal, the PCT stated at paragraph 4.19, that it had 'placed very little weight on the population figure of 7,470.' In their representations on the appeal, CHC suggested that the figure related to Cannington ward said to cover a much larger area and taking in several other villages. The Committee therefore had no further regard to it in determining the appeal.
- 7.7 The Committee noted the applicant had 'severe doubts as to the methodology used by the Trust in its deliberations' and wished to use the right of appeal against the PCT's determination 'in the light of absence of evidence as to how the numbers were calculated.' The applicant also referred to the PCT having made a 'critical miscalculation'.
- 7.8 The Committee was aware that Regulation 35(1) requires the PCT to determine at the date of the receipt of the application, whether the premises or relevant location from which the applicant wishes to provide pharmaceutical services are in a Reserved Location. The PCT's calculation was at 15 June 2009, 5 days after the application was received by the Trust. However, the applicant had not suggested that the passage of time had contributed to the PCT's alleged miscalculation in determining reserved location, nor did the Committee have information to show that the PCT's calculations were affected in any way.
- 7.9 The Committee noted the applicant's view that a large component of the 'neighbourhood population' is missing from the PCT's calculation. The applicant focused upon the number of people likely to be in Cannington, with particular regard to The Cannington Centre and Brymore School. Detailed information was provided regarding activities taking place at those establishments. However, the Committee noted much of the information contained in the appeal letter did not assist in determining whether or not reserved location status should be applied in this instance. The applicant had lost sight of the wording of Regulation 35.
- 7.10 As this was an application for preliminary consent the PCT could not have known the exact location of the proposed premises. However, the applicant had not suggested that the PCT's 'best estimate of where the premises may be' contributed to the alleged miscalculation of the number of individuals.
- 7.11 The Committee noted the PCT's figure had been arrived at using the 'Exeter system' to identify the postal town of each patient's address. Whilst the PCT have referred to a limitation at paragraph 4.17, the applicant had not been able to show how the data

based on the Exeter system, was incorrect. The Committee had no information to indicate that the Exeter system was other than the most appropriate and accurate means of identifying those individuals on all patient lists within 1.6 km of the proposed site. Neither the applicant nor any other party, had shown that the limitations referred to at paragraph 4.17, nor any 'margin for inaccuracy' (applicant refers), had led to any variation, and then of a degree sufficient to cast doubt on the PCT's figure of 2,347.

7.12 The Committee considered that the applicant had failed to demonstrate in accordance with the regulations, that the number of individuals on all of the patient lists for the area which is within 1.6km of the proposed location, is more than 2,750.

7.13 The Committee next considered the applicant's reference to Regulation 35(3). The Committee considered no information had been provided to show there are circumstances, including but not limited to the age or degree of infirmity of the individual referred to in paragraph 35(2), why the extent of use of pharmaceutical services if a pharmacy were to operate from the relevant location would be similar to or greater than might be expected if the number of individuals mentioned in paragraph (2)(a) were 2,750 or more.

8 Decision

The Committee was satisfied, that the relevant location, from which the applicant wishes to provide pharmaceutical services, are in a reserved location. Accordingly, the Committee dismisses the appeal.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr M Punni, John Ware Ltd – Applicant/Appellant
Mrs L Tovey – Somerset PCT
Mr N Woollcombe- Adams – Somerset LPC
Dr H Yoxall – Somerset LMC
Ms J Watson – Boots UK Ltd
Dr C Macadam – Cannington Health Centre
Ms C Jarrett – Lloyds Pharmacy Ltd
Mr D Gilder – Sainsbury's Supermarkets Ltd