

12 January 2010

REF: SHA/15402

APPEAL AGAINST LEEDS PCT DECISION TO REFUSE AN APPLICATION BY LLOYDS PHARMACY LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT THE LIGHT, THE HEADROW, LEEDS

1 The Application

By application dated 5 May 2009, Lloyds Pharmacy Ltd ("the Applicant") applied to Leeds Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at The Light, The Headrow, Leeds. In support of the application it was stated:

- 1.1 We believe this application is necessary or desirable to secure to the population the adequate provision of pharmaceutical services.
- 1.2 For the purpose of this application we would submit that the neighbourhood is that as defined on the attached map in blue. To the south the neighbourhood boundary is Wellington Street and includes the offices which occupy the part of Whitehall Road closest to the train station. To the east the boundary would be Park Row and Albion Street. To the north, Great George Street The Western boundary is the A55
- 1.3 The neighbourhood boundaries represent either significant geographical features or the boundaries separate the different characteristics of the locality.
- 1.4 In 2008 a new GP led medical, centre opened in The Light on the Headrow to serve the health needs of a growing city centre population, which at the 2001 census stood at 4150, and is predicted to grow to 12,000 by 2010. The light also houses a walk in centre which provides extended hours and services.
- 1.5 From both the walk in centre and the medical centre, there are no pharmacies with adequate access, the nearest being either in the Merrion Centre where there is a Superdrug & Boots or the Boots on Albion Street, all of which are outside the neighbourhood in the central retail district.
- 1.6 There are currently no pharmacies open extended hours within easy reach of this large primary care facility.
- 1.7 For the above reasons we submit that this application is necessary and desirable to secure in the neighbourhood adequate provision of pharmaceutical services and to provide a reasonable choice of services to patients and residents.

2 The PCT Decision

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

- 2.1 The PCT Pharmacy Application Panel met on the 24th August 2009 to give consideration to the above application. Following recommendation from the Pharmacy Panel, with reference to regulation 12; it has been agreed that this

application is refused on the basis that it is not considered “necessary or desirable.” The rationale for this decision is as follows:

- 2.2 The neighbourhood stipulated by Lloyds does not correspond to the neighbourhood previously agreed by the Application Panel in 2007. Please refer to the definition below:
- 2.3 The neighbourhood boundary was defined as starting at the junction of Cookridge Street and Clay Pit Lane. The boundary then runs north east along Clay Pit Lane to the A64(M) inner ring road; south along the A64(M) and then east (as it turns into New York Road) to the junction with Eastgate. The boundary then runs south west along Eastgate to the junction with St Peter’s Street. Then south east along St Peter’s Street and into Duke Street to the railway line. The boundary then runs west along the railway line to Leeds city station, includes the station building within the boundary, then north along Aire Street and City Square to the junction of Park Row. Then north up Park Row and along Cookridge Street back to Clay Pit Lane.
- 2.4 Taking the above into consideration this application was not considered necessary or expedient (desirable) to secure the adequate provision of services in the neighbourhood because:
 - 2.4.1 there is already 6 Pharmacies in the neighbourhood
 - 2.4.2 the PCT is not aware of any complaints in relation to current service provision in this neighbourhood.
 - 2.4.3 there is no evidence of inadequacy
 - 2.4.4 the application would not provide any addition opening hours in the neighbourhood
 - 2.4.5 The application would not provide any additional services in the neighbourhood that cannot be commissioned from existing pharmacies to meet the needs of the population.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 2 October 2009, Lloyds Pharmacy Ltd appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 We believe that the PCT came to the wrong decision in refusing this application and we would contend that this application is both necessary and desirable to secure, within the neighbourhood, the adequate provision of pharmacy services.
- 3.2 The PCT state that the neighbourhood should be defined as from a previous application in 2007. We would stand by our assertion that the neighbourhood should be defined as the following; to the south the neighbourhood boundary is Wellington Street and includes the offices which occupy the part of Whitehall Road closest to the train station. To the east the boundary would be Park Row and Albion Street to the north Great George Street. The western boundary is the A58.
- 3.3 The neighbourhood boundaries represent significant geographical features separating the different characteristics of the locality. Access to the existing pharmacies is not adequate or straightforward from the proposed site given the busy roads and distances that need to be traversed.

- 3.4 The proposed neighbourhood contains both a residential and visiting population. There are new flats that have been built, and the neighbourhood also incorporates a large number of offices (and their workers), together with the new Health Centre and The Light retail facilities this has its own local characteristics. The appeal unit will also be aware that when considering provision of pharmaceutical services the visiting population can also be considered along with that of an existing residential population.
- 3.5 A new GP led medical centre accommodating 5 doctors and serving over 2000 patients opened in 2008 at The Light on the Headrow. This services the health needs of a growing city centre population.
- 3.6 In December 2007 the surgery extended their opening hours to include 7am — 7pm on Tuesdays and Thursdays and Saturdays. This moved proved very popular with city centre residents who are now able to access a GP before and after work. We are proposing to open extended hours, all of which will cover the late night surgeries currently being provided by the surgery.
- 3.7 We maintain that provision of pharmaceutical services is not wholly adequate at the proposed site and therefore, we respectfully submit that the PCT should have granted our application.
- 3.8 For the above reasons we respectfully ask the FHS Appeal Unit to reconsider this application and uphold this appeal as we submit it is necessary or desirable to secure the adequate provision of pharmaceutical services in the neighbourhood and provide a reasonable choice of services to patients.

4 **Summary of Representations**

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

4.1 **BOOTS UK LTD**

- 4.1.1 We agree with the PCT decision to reject the application and their reasoning.
- 4.1.2 We disagree with the applicant's proposed neighbourhood boundaries. Again we contend that the boundaries have been defined with the sole purpose of excluding the existing pharmacies to the in the City Centre area [sic].
- 4.1.3 The neighbourhood has been defined previously by the PCT as being the area between the A58/A64 and the railway line to the east of Park Row and Cookridge Street. There are six existing pharmacies within this neighbourhood.
- 4.1.4 Had the PCT chosen to adopt the applicant's suggested neighbourhood, given the accessibility and close proximity of these pharmacies to the proposed location, we submit it would have been wholly appropriate for the PCT to have considered services outside the neighbourhood accessed by those in the neighbourhood in this case.
- 4.1.5 A previous application submitted by National Co-operative Chemists for a new contract at The Light was previously rejected by the PCT in March 2007. We are not aware of any significant changes in the neighbourhood since this time that would have an adverse affect on the adequacy of pharmaceutical services.
- 4.1.6 The applicant has failed to provide any evidence to suggest that the existing pharmacies in the area are unable to meet the present demand for

pharmaceutical services or these existing pharmacies will be unable to meet any future increase in demand for such services.

- 4.1.7 Existing pharmacies in the neighbourhood provide access to services seven days a week (Boots Leeds Station, Boots Albion Arcade, Boots Kirkgate) and from 6am weekdays and until Midnight every night (Boots Leeds Station).
- 4.1.8 The Boots pharmacies also provide access to an extensive range of services including Medicines Use Reviews, supervised administration, smoking cessation, emergency hormonal contraception, services to care homes, private PGDs (weight management, hair retention) and free prescription collection and delivery services.
- 4.1.9 We disagree with the view of the appellant that access to the existing pharmacies is not adequate or straightforward.
- 4.1.10 All of the Boots pharmacies in the neighbourhood are within half a mile and 10 minutes walk of the proposed location. People move freely around this area of the city centre to shop and access leisure facilities. Furthermore, key transport links including Leeds Railway Station and Leeds City Bus Station are located within the neighbourhood and close proximity to the existing pharmacies.
- 4.1.11 There have been no complaints to our knowledge to the PCT or LPC to prove that the provision of pharmaceutical services is anything other than adequate. There is no evidence to support desirability.
- 4.1.12 In conclusion, we believe the applicant has not discharged the burden of proof by not providing any evidence of an inadequacy in the existing pharmaceutical services.
- 4.1.13 We therefore submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

4.2 LEEDS LPC

- 4.2.1 Members were mindful of an application for this site in October 2006, which was refused by NHS Leeds in February 2007. In their decision letter the PCT defined the neighbourhood as starting at the junction of Cookridge Street and Clay Pit Lane, the boundary then runs north east along Clay Pit Lane to the A64 inner ring road; south along the A64 and then east (as it turns into New York Road to the junction with Eastgate). The boundary then runs south west along Eastgate to the junction with St Peter's Street, then south east along St Peter's Street and into Duke Street to the railway line then runs west along the railway line to Leeds City Station, includes the station building then north along Aire Street and City Square to the junction of Park Row then north up Park Row and along Cookridge Street back to Clay Pit Lane. This is very different to the neighbourhood proposed now by the applicant.
- 4.2.2 Members did not see any reason to redefine the neighbourhood from that agreed before. This neighbourhood already contains six pharmacies, all within a short walking distance with no barriers and routes being well lit and flat.
- 4.2.3 Members were of the opinion that the projected population figures might now be exaggerated owing to the recession with property remaining unsold. Patients using the services are likely to walk to the medical services passing existing pharmacies. Residents are unlikely to be elderly, infirm or young families, with most accommodation being high rise apartments.

4.2.4 The applicant has failed to demonstrate any inadequacies of existing services to the area and there is no evidence to suggest existing services could not deal with any future increase demand.

4.2.5 The applicant does not offer any extra opening hours to existing provision and members concluded that provision is more than adequate with a good choice of services and providers. They do not support this application on the grounds that it is neither necessary nor desirable to ensure the adequate provision of pharmaceutical services to this neighbourhood.

4.3 SUPERDRUG STORES PLC

4.3.1 We would like to comment that we do not agree with Lloyds pharmacy definition of neighbourhood, as we have previously stated, and that our pharmacy and, indeed Boots pharmacy are a mere 2 minute walk from the proposed premises and are in the same neighbourhood. Indeed, many of our customers (who visit both our Merrion Centre and Kirkgate stores) already attend the walk in Centre and GP Surgery at The Light.

5 Consideration

5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site (or location) of the proposed pharmacy.

5.2 It also had before it the responses to the Authority's own statutory consultations.

5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

5.4 The Committee had regard to Regulation 12(1), the necessary or desirable test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").

5.5 The Committee dealt with the application by way of reconsideration of all the issues.

5.6 The Committee noted that the neighbourhood defined by the PCT had been disputed on appeal by the applicant. The Committee noted that the PCT had defined the neighbourhood as for a previous application for The Lights and the applicant had sought to argue that they had relied on significant geographical features. The Committee was of the view that the applicants proposed site was within the retail part of the city centre, albeit on the western edge, and accepted the neighbourhood as defined by the PCT without prejudice to any future applications. However the Committee noted that even if the applicant's neighbourhood had been adopted, account would have to be taken of pharmacies outside of the neighbourhood.

5.7 The Committee noted that there were currently six pharmacies located within approximately ½ a mile of the proposed site, operated by two different contractors. Being mindful of the current pharmaceutical provision the Committee considered that there was no information upon which to conclude that the neighbourhood did not have a reasonable choice of pharmaceutical services within it.

5.8 Given the above, the Committee considered that the current provision of pharmaceutical services could not be said to be wholly inadequate and therefore the application was not necessary. The Committee went on to consider, on the spectrum of adequacy, whether the application was desirable.

- 5.9 The Committee noted the assertion from the applicant that access to existing pharmacies is not adequate or straightforward. The Committee noted the comments from the existing pharmacies and the LPC that people move freely around the city centre and that it is well lit and the terrain is flat. The Committee noted that these representations had not been disputed by the applicant and that although they stated that there were busy roads to be crossed they had not provided any further information that would lead the Committee to view these as a potential barrier within a city centre environment.
- 5.10 While the Committee had regard to the services offered in the application, there is no suggestion that the existing pharmacies are not providing essential and directed services as commissioned by the PCT. The Committee also noted that no gaps had been identified by the PCT. In addition, the Committee noted that no information had been provided by the applicant to show that existing pharmacies were not currently able to cope with existing demand or any future perceived increase in demand.
- 5.11 The Committee noted the applicant's argument that the proposed pharmacy would provide extended hours, which would cover the late night surgeries being offered at the new medical centre. The Committee noted that the extended hours proposed by the applicant were supplementary hours, which could be withdrawn at 90 days notice. The Committee was mindful that the PCT already has the power under the Regulations to direct existing contractors to open for additional hours where it considers there is a need to do so, in order to meet the pharmaceutical needs of people in the neighbourhood.
- 5.12 The Committee noted the comments from the applicant with regards to the visiting population as well as the resident population. The Committee were of the view that the majority of those in the neighbourhood would be seen as a 'visiting' population and noted the comments that the train station and bus station were within the neighbourhood, and both of these were in the vicinity of existing pharmaceutical services. The Committee was of the view that those visiting the city centre, for whatever reason, would find the existing pharmacies accessible and that no information had been provided to show that this was not the case.
- 5.13 On balance, the Committee determined that the applicant had not demonstrated, the onus being on the applicant, that there is a gap on the spectrum of adequacy sufficient to conclude that the provision of pharmaceutical services is not currently secured to the standard of adequacy.
- 5.14 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the current provision within that neighbourhood, together with any potential advantage that could be gained by granting this application, in particular by way of access and a reasonable choice of provider, given that a purpose of being in that neighbourhood may be to access primary medical services from which pharmaceutical services may be required by the reliant population, then the Committee determined that pharmaceutical services were currently secured to the extent that it was neither necessary nor desirable to grant the application.

6 Decision

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

Jill Jackson
Appeal Officer

A copy of this decision is being sent to:

Lloyds Pharmacy Ltd

Boots UK Ltd

Superdrug Stores plc

Leeds LPC

West Yorkshire Central Services Agency on behalf of Leeds PCT