

2 February 2010

**REF: SHA/15536**

**APPEAL AGAINST NORTHUMBERLAND PCT  
DECISION TO REFUSE AN APPLICATION BY K CHEM  
LIMITED FOR PRELIMINARY CONSENT PRIOR TO  
INCLUSION IN THE PHARMACEUTICAL LIST AT THE  
SHOPPING AREA OF CLIFTON ROAD JOINING FRONT  
STREET AND HIGH PIT – EAST CRAMLINGTON  
(WARD)**

**1 The Application**

By application dated 11 June 2009, K Chem Ltd (“the Applicant”) applied to Northumberland Primary Care Trust (“the PCT”) for preliminary consent prior to inclusion in the pharmaceutical list at the shopping area of Clifton Road joining Front Street and High Pit – East Cramlington (ward). In support of the application it was stated:

- 1.1 The proposed area is the neighbourhood of “Cramlington East Ward” which has a population of 5408. This neighbourhood is densely populated and ranked in the top 20% lower lay super output areas index of multiple deprivation. The exact location of the proposed pharmacy will be within the area circled in black on the attached map (appendix A).
- 1.2 Blyth Valley Local Authority is a Department of Health ‘spear head area’ and Cramlington East is recognised as a priority area within the Local Authority.
- 1.3 25% of residents suffer from a limiting long term illness (England NE 18%) 14% describe their health as ‘not good’ (England NE 9%) 10.41% are economically inactive due to permanent sickness or disability.
- 1.4 Cramlington East has a range of shops and services however there are currently no health services within the community. The pharmacies in Cramlington are located within the commercial centre of town and adjacent to doctors surgeries, the nearest of which is 1.5 miles by car from the proposed site of the pharmacy.
- 1.5 Although collection and delivery services are offered for prescriptions in order to access pharmacy services such as Pharmacy First, Smoking Cessation and EHC and the provision of OTC medicines and advice patients must travel to the town centre.
- 1.6 Car ownership is low (36% of households do not own a car) so there is a heavy reliance on public transport particularly for the elderly and infirm who may be unable to walk a mile to the town centre.
- 1.7 In order for enhanced pharmacy services to deliver their intended outcomes convenient access is paramount to success.
- 1.8 The Control of Entry criterion of choice is also relevant in considering this application as currently there is neither choice nor competition within the Cramlington East community.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 5 November 2009 states:

- 2.1 I am writing in accordance with Regulation 27(1)(b) of the NHS (Pharmaceutical Services) Regulations 2005, in respect of the above pharmaceutical application.
- 2.2 I must advise that, following consideration, your application has been refused. The relevant report of the PCT's decision making meeting is appended overleaf, for your information and a copy of the map defining the neighbourhood.

#### Decision Report

- 2.3 On 15 June 2009, an application was received from K-Chem Ltd for preliminary consent for inclusion in the pharmaceutical list to provide services from a new pharmacy in the shopping area Clifton Road, Cramlington.
- 2.4 As the application was not exempt from the requirements of the necessary or desirable test, as specified by Paragraph 12 of the NHS (Pharmaceutical Services) Regulations 2005, consultation was carried out in accordance with the requirements of paragraph 23(2) of the regulations.

#### Consideration of the Application

- 2.5 Prior to consideration of the application, the Panel considered the information provided by the applicant and the representations received as part of the Consultation process from the following:
  - 2.5.1 Boots UK Limited
  - 2.5.2 Northumberland Local Pharmaceutical Committee
  - 2.5.3 Dr Leith, The Health Centre, Forum Way

#### Determination of Neighbourhood

- 2.6 The panel considered the neighbourhood proposed by the applicant as comprising:
  - 2.6.1 Cramlington East ward
- 2.7 The panel defined the neighbourhood as:
  - 2.7.1 Northern: A192
  - 2.7.2 Eastern: A189
  - 2.7.3 Southern: A1171
  - 2.7.4 Western: A1171
- 2.8 The panel was minded that a previous appeal panel considered Cramlington to be a neighbourhood but was unable to determine whether this should include Cramlington East.
- 2.9 Precise details of the neighbourhood are as shown in the attached map.
- 2.10 Having defined the neighbourhood, the panel then considered the criteria of necessary or desirable as set out in paragraph 12 of the regulations.

#### Necessary or Desirable Test

- 2.11 The panel made reference to the Pharmaceutical Needs Assessment (PNA) and accepted that the PNA needed to be updated to reflect the changes that had occurred in recent times.

- 2.12 **The current level of access within the neighbourhood to the MRS pharmaceutical services the applicant proposed to provide.** The panel noted that there are currently four pharmacies, including one 100 hour pharmacy, providing services within the neighbourhood. There are numerous paved, well-lit pathways threaded through-out the area which link the neighbourhood to the town centre and a number of people were observed using these paths during a previous site visit.
- 2.13 **The extent to which services in the neighbourhood already offer a choice to patients which may be improved by additional providers.** The current service providers in the town centre provide adequate choice of services to patients.
- 2.14 **The extent to which there is reasonable choice of providers in the neighbourhood which may be improved by additional providers.** The current service providers in the town centre provide adequate choice to patients resident in the neighbourhood. The four pharmacies are owned by four different contractors.
- 2.15 **The extent to which current service provision in the neighbourhood is adequately responding to the changing needs of the community it serves or to local PCT delivery plans designed to meet primary care policy objectives.** Extended hours are currently provided by the 100 hour pharmacy within the town centre. Advanced and enhanced services are provided by at least one pharmacy within the town centre.
- 2.16 **The extent to which the applicant proposes to improve service provision in the neighbourhood through innovation or new directions in delivery.** The panel determined that the applicant would make no improvement to service delivery, as all enhanced services are available and patients have access through extended hours.
- 2.17 **The extent to which the application will meet the need for specialist or other services which improve the provision of, or access to, services for example to specific populations or vulnerable groups.** The panel was satisfied that the applicant will not improve provision of or access to services for specific populations.
- 2.18 **The assessment of the overall impact on the neighbourhood in the long term.** The panel considered that the current service providers could meet the future needs of the local population and be able to deliver services to a significantly increased population. Provision from an additional provider could destabilise pharmacy provision, leading to a loss of choice in the future.

#### Decision

- 2.19 Based upon all the above and being minded of a previous appeal panel decision, the panel concluded that it was neither necessary nor desirable to award a new contract to secure the adequate provision of pharmaceutical services in the neighbourhood.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 20 November 2009, K Chem Ltd appealed against the PCT's decision. The grounds of appeal are:

- 3.1 We do not agree with the PCTs definition of our proposed neighbourhood as being the whole of Cramlington. As a resident of Cramlington for the last 10 years I would consider the population of the town to be very diverse with distinct areas largely defined by housing type, employment status and health (see enclosed photos showing examples of streets typical to various areas in the town). Historically our defined neighbourhood was a mining community as reflected in the housing stock statistics which show 35.6% of households as social rented. The area has a strong sense of community with its own Post Office, Convenience Stores, Dentist, Social

Club and a wide variety of other retail and service outlets. It is contained within well defined A roads which allow through traffic to avoid the town centre. There is therefore no through route for cars between the various estates which has the benefit of preventing 'rat running'. Within the estates many roads are closes which again restricts traffic. This restriction of through traffic is highlighted by maps 1 and 2 which show the local bus route, the same route for cars as the junction of Village Road and Northumbrian Road has bollards in place preventing direct access to Manor Walks Shopping Centre.

- 3.2 Residents of East Cramlington ward are 1.4-1.7 miles away from their nearest Pharmacy by the nearest practical route with statistics showing 35.8% of households have no car (Access by foot involves crossing the busy Northumbrian Road (there is a subway to the north of the ward, marked on our map, however this increases the distance to walk). The foot path to the Manor Walks Centre goes up an incline through Cramlington Village and is not an easy walk for the elderly/ infirm.
- 3.3 Please find enclosed map 3 which shows the boundaries of the neighbourhood as we define it.
- 3.4 The population of Cramlington is 34,534 (2001 census data) and is split into 8 local government wards. The ward of Cramlington East has 2414 households and a population of 5408 with 22.3% being over the age of 60yrs. The Blyth Valley Local Development Plan highlights the future development of the south west area of Cramlington and use of brownfield sites within the town. The recent closure of Klondyke School in Cramlington East Ward leaves a large brownfield site whose future development would increase the ward population.
- 3.5 Cramlington East has two LSOAs ranking within the top 20% most deprived nationally.
- 3.6 Government statistics confirm this is an area of high health and social inequality

Ward	Population	Health not good (%)	Long Term Limiting Illness (%)	Economically Inactive/ Permanently sick (%)
Cramlington East	5,408	14.24	25.31	10.41
South East	4,152	9.63	18.98	6.25
Village	4,385	10.63	21.46	6.53
West	3,615	12.84	23.40	13.65
North	5,606	3.75	7.94	2.66
Parkside	3,355	8.38	14.13	4.14
Eastfield/East Hartford	3,877	8.07	13.44	6.63
Hartford	4,136	No statistics	No statistics	No statistics

- 3.7 The table above shows that key statistics for the 8 wards in Cramlington vary considerably.
- 3.8 For example comparison between statistics for the North and Cramlington East would indicate these areas are very different and would not normally be classed as being in the same neighbourhood.
- 3.9 When considering our application the PCT made reference to a previous application to provide pharmaceutical services from Glenluce Court. In our opinion this application is not relevant to ours as this location would serve a different community South East Cramlington ward which has different population, health and social demographics.

- 3.10 Please refer to our response to the LPCs comments regarding our application, dated 11/08/09. This letter also makes reference to the consideration of Cramlington as a potential Darzi site.
- 3.11 There are 4 existing Pharmacies in Cramlington located next to G.P Surgeries in the centre and north of the town. Yet the comparable population of Blyth has 7 existing Pharmacies with an additional new Pharmacy Contract recently granted. The high ratio of Pharmacy to population means that there are significant and on-going pressures on a number of services within Cramlington particularly around supervision of methadone, provision of needle exchange and smoking cessation services. For all these enhanced services and also for the PCTs established Minor Ailments Scheme (Pharmacy First) convenient access is a primary contributor to their uptake and success. The proposed new Pharmacy will provide this access to the neighbourhoods 5400 residents. For those attending a surgery who wish to have a prescription dispensed immediately access to pharmacies is adequate yet approx. 80% of prescriptions are repeat which can therefore be dispensed at a time and in a place to suit the patient. As stressed in our original application access to pharmacy services is paramount to their successful delivery.

#### 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 As the Appeals Authority will be aware, a previous application for premises in the south east of Cramlington was rejected at appeal in February 2009 and after an oral hearing (NHSLA Case Ref: 14767) – Application by United Pharmacies for premises at Glenluce Court, Cramlington).
- 4.1.3 Members of the appeal panel concluded at the time that the neighbourhood should be the whole of Cramlington and unanimously recommended that pharmaceutical services to the neighbourhood of Cramlington were adequate and that it was not necessary or desirable to grant the application.
- 4.1.4 We are not aware of any significant changes in the area since this time that would lead to a different conclusion.
- 4.1.5 There are four pharmacies currently serving the Cramlington neighbourhood. These pharmacies provide patients with access to a range of pharmaceutical services, a choice of service provider, and access to services for extended hours over seven days a week (Boots Pharmacy at Manor Walks and Sainsbury's 100 hour pharmacy).
- 4.1.6 The appellant has failed to provide any evidence to suggest that the existing pharmacies in the area are unable to meet the present demand for pharmaceutical services or that these pharmacies will be unable to meet any future increase in demand for such services.
- 4.1.7 Furthermore, the appellant has failed to provide any indication of significant difficulties encountered whilst wishing to access pharmaceutical services in the area.
- 4.1.8 We note that the PCT have stated in their report that there are numerous paved, well lit pathways threaded throughout the area.

4.1.9 The applicant's interpretation of our view on neighbourhood definition is incorrect. For completeness, we would like to clarify that our initial comment to the PCT stated that 'Neighbourhoods, for the purpose of determining applications within the regulations, are usually defined by physical geographical or social feature. Ward boundaries do not always follow the same criteria.'

4.1.10 In conclusion, we 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.

## 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. The Committee noted that the applicant sought to argue that the neighbourhood should be based on the ward boundaries and should be that of East Cramlington. The Committee noted that the PCT neighbourhood appeared to be based on a previously defined neighbourhood, following an oral hearing, and was based on geographical rather than social factors. The Committee had reservations with regard to the neighbourhood being the ward of East Cramlington, due to the A189 bisecting the ward. The Committee noted that the neighbourhood defined by the PCT had used the A189 as the eastern boundary, and was of the view that this was a reasonable boundary. The Committee accepted, without prejudice to any future applications, the neighbourhood previously defined and adopted by the PCT on this occasion.

5.7 The Committee noted that within the neighbourhood there were four pharmacies, all of which were located within the vicinity of the existing medical provision within Cramlington. The Committee had regard as to whether the population had a reasonable choice of provider of pharmaceutical services in the neighbourhood. The Committee concluded that no information had been provided to show that the four pharmacies in the neighbourhood, all operated by different contractors, did not provide a reasonable choice of provider and services.

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 expedient.

5.9 The Committee noted that the applicant is not proposing to provide any additional hours and noted that no information had been provided to show that there was currently any difficulties accessing current provision during existing hours. The Committee also noted the comments from Boots with regards to the extended hours

currently available in the neighbourhood both at their existing pharmacy and at Sainsbury's.

- 5.10 The Committee noted that no information had been provided to show that there was currently any inadequacy with regard to current demand for pharmaceutical services or any perceived future increase. The Committee noted that the applicant was also not proposing to offer any additional services which were not already commissioned in Cramlington.
- 5.11 The Committee noted the distances to the nearest pharmacies, which are not significant or disputed by parties. The Committee is of the view that distance of itself does not result in an inadequacy of pharmaceutical services. The Committee noted information provided by the applicant to suggest that there is a high proportion of the population who are suffering from a long term illness and that due to low car ownership access to pharmaceutical services is not adequate. The Committee noted the comment with regards to access by foot, however noted that no information had been provided to show that those on foot who were willing and able to do so could not access the existing pharmacies, or that those who had the use of a car would not be able to access existing pharmaceutical provision either within the neighbourhood or further afield. The Committee noted the information provided with regards to the bus service for those without a car who are unable to access on foot.
- 5.12 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 expedient to grant the application.

## 6 Decision

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

**Jill Jackson**  
**Appeal Officer**

A copy of this decision is being sent to:

K Chem Ltd  
Boots UK Ltd  
North East Family Health Services Agency on behalf of Northumberland PCT