

2 February 2010

REF: SHA/15487

APPEAL AGAINST WARRINGTON PCT DECISION TO REFUSE CLICK TRADING LTD'S APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST AT UNIT 4, HEATLEY MERE, CHASE MEADOWS, LYMM WA13 9UP

1 The Application

By application dated 27 February 2009, Click Trading Ltd ("the Applicant") applied to Warrington Primary Care Trust ("the PCT") for inclusion in the pharmaceutical list at Unit 4, Heatley Mere, Chase Meadows, Lymm WA13 9UP. In support of the application it was stated:

1.1 The boundaries of the applicant's defined neighbourhood:

Northern: River Mersey.

Eastern: Mill Lane.

Southern: Bridgwater Canal.

Western: Fields.

1.2 There is no pharmacy or surgery in the defined neighbourhood. A local pharmacy would provide much needed services in the village of Oughtrington. The current provision of pharmaceutical services in the area is inadequate; therefore the Applicant believes that the proposed application is both necessary and desirable to secure an adequate provision of pharmaceutical services within the vicinity.

1.3 A large residential area has recently been constructed in and around the proposed location of this pharmacy. The population of Oughtrington has increased substantially, and the applicant feels that a village the size of Oughtrington requires a full pharmaceutical service to be included. From census estimates, the population of this neighbourhood is around 3000.

1.4 Many patients within the proposed neighbourhood have difficulty accessing Pharmaceutical services. The closest pharmacy is over a mile away. Parking is limited in Lymm village centre. The elderly and disabled population will find it difficult to access pharmaceutical services as they require easy access close to their homes.

1.5 The Applicant understands that there is a delivery service provided for the housebound, but many patients need to attend the pharmacy for services such as MUR, OTC diagnostic testing, repeat prescription, smoking cessation and other essential, advanced or enhanced services.

1.6 There are a considerable number of families with children in the area, who usually require close and easy access to a pharmacy. This is vital in order to support self care. The statement is supported by a white paper published by the Department of Health in 2000 called "Pharmacy for the future — implementing the NHS Plan." "Meeting the changing needs of a patient", was one of the challenges set by this paper and includes:

- 1.6.1 Ensuring people can get medicines or pharmaceutical advice easily and conveniently.
 - 1.6.2 More support in using their medicines; extra help for those who need to get the best out of their medicines.
 - 1.6.3 Building on the trust and confidence that people place in pharmacists and pharmacy services.
- 1.7 The proposed pharmacy is central to the proposed neighbourhood residence and near shops that they use on a daily basis:
- Co-op late shop.
 - Bila Boutique.
 - The Look- hair and beautician.
 - The Green Dragon Pub.
 - Boheme Restaurant.
 - Farmers Arms Pub.
 - Cycle Life-Cycling shop.
 - Dental Care-Dentists.
- 1.8 The applicant aims to enhance pharmaceutical services for this significant residential population.
- 1.9 The direction of national policy is currently for the growth of essential pharmaceutical services, and the applicant has identified a need for pharmaceutical services in the proposed neighbourhood.
- 1.10 A pharmacy would also provide the community with greater choice in where they can access pharmaceutical services, so promoting competition, and encouraging higher levels of health services and reduced prices amongst neighbouring competing pharmacies.
- 1.11 The applicant intends to provide all essential, advanced, and enhanced services as commissioned by the PCT, as set out in their application document. If granted, services will be run by a fully accredited pharmacist.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter from Cheshire Health Agency (on behalf of the PCT) dated 16 October 2009, states:

- 2.1 The group looked firstly at the neighbourhood proposed by the applicant. They did not agree with this, namely the West vertical boundary which appears to cut off the centre of Lymm and the 2 pharmacies contained therein. Instead the Pharmaceutical Operational Group (POG) group felt that the current defined recently upheld in a recent appeal was still valid. This is because nothing has changed in the neighbourhood. There is ribbon housing from Lymm along the A6144 towards Oughtrington with nothing to suggest that either area is a separate neighbourhood.
- 2.2 Using the existing neighbourhood the PCT considered the existing provision. There are 2 pharmacies with a collection/delivery services. It was also noted that no

complaints had been received about the current service provision. It was noted that the applicant supplied a photocopied page of 2 medication boxes dispensed by Lloyds at a different site to that of where the prescription was received. The label clearly states the medication was assembled at another site. The PCT did not consider this alone meant the current provision was anything less than satisfactory.

- 2.3 The applicant's opening hours were looked at and the group questioned the applicant's decision not to propose any opening hours on a Saturday whilst both of the existing pharmacies open on a Saturday with Lloyds including core hours on this day.
- 2.4 Baring in mind the above, the PCT does not consider that an additional contract is necessary or desirable, to secure adequate pharmaceutical services in the neighbourhood. The application is refused.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 12 November 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The applicant believes the neighbourhood as defined in their application is a much more practical suggestion than that as defined by the Pharmaceutical Operation Group. To suggest that someone living in Chase Meadows is a neighbour of someone living in Highfield Road or Foxley Close is nonsense, purely due to the distance between them.
- 3.2 The PCT states that "nothing had changed in the neighbourhood". This is incorrect as new housing is continuing to be added at various sites in the Lymm Neighbourhood as defined by the PCT.
- 3.3 The PCT states that there is "ribbon housing from Lymm along the A6144 towards Oughtrington". Is this to suggest that the housing is insignificant? The neighbourhood as defined in the application has some 3000 people in it. The applicant feels this is a significant population to warrant a community pharmacy.
- 3.4 The applicant would suggest that the fields to the western boundary of the neighbourhood as defined in the application clearly marks out the separate neighbourhood from the rest of Lymm.
- 3.5 Just because no complaints have been received by the PCT does not indicate that the people in the neighbourhood are entirely satisfied with the current service. Many patients are unaware of the Patient Advice and Liaison Services and how to complain.
- 3.6 The applicant sent copies of two items dispensed by one of the current contractors that were clearly dispensed at another site. The applicant has many other examples of these, available upon request. This clearly indicates that the contractor is unable to deal with the volume of prescriptions as they find it necessary to send prescriptions to a central location for dispensing. From conversations with patients in the neighbourhood, this has led to delays in their prescriptions being dispensed. This is clear evidence that an additional pharmacy provider is necessary and desirable in the neighbourhood whether as defined by the PCT, or the applicant.
- 3.7 The applicant has proposed core opening hours from Monday to Friday, but is prepared to open on Saturday mornings if the PCT indicates that this is required.
- 3.8 The applicant believes that the neighbourhood as defined in the application is sound and sensible, and because the current contractors are unable to dispense all their

prescriptions at their Lymm sites, that the application is both necessary and desirable to secure pharmaceutical services in the neighbourhood.

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.

Lloyds Pharmacy Ltd

- 4.1 Click Trading Ltd deems the existing pharmaceutical services inadequate based on the fact that there is no pharmacy in their proposed neighbourhood and therefore they believe that existing pharmacies are inaccessible. Lloyds believe that the absence of a pharmacy within a neighbourhood does not necessarily render the existing service inadequate.
- 4.2 Lloyds would also argue that the applicant has carved up the area of Lymm to create a neighbourhood with no pharmacy in and has not provided any real evidence to show that local residents have access difficulties. Lloyds would therefore suggest that this application is based more on reasons of convenience rather than of adequacy. There are not two neighbourhoods in Lymm as residents in all parts of the village see themselves as Lymm residents.
- 4.3 Lymm is also an affluent area and the new houses are good quality with the population mobile and high car ownership. The FHS Appeal Unit has also recently determined that Lymm has a wholly adequate pharmaceutical service as determined in ref SHA/15117 and therefore Lloyds do not believe any gaps exist.
- 4.4 A wholly adequate pharmaceutical service is already provided to patients and residents and Lloyds submit there is no evidence to the contrary. Lloyds would therefore submit that the application and appeal be refused accordingly.

Hall & Stevens Family Pharmacy

- 4.5 Regarding the above appeal, H&S cannot pretend to object to another pharmacy in Lymm, as they have just had their application for a pharmacy there refused by the PCT and the Litigation Authority on appeal. H&S are therefore not going to argue the case regarding accessibility, housing, geography, parking availability etc, because these have all been covered in their appeal case, which H&S are sure the Authority will consult before making a decision.
- 4.6 What can H&S say, without contradiction, is that this application should be refused for exactly the same reasons that their application was refused, in both 2005 and earlier this year:
 - 4.6.1 The Litigation Authority, in their letter of refusal clearly state that:
 - 4.6.1.1 The neighbourhood remains as defined in 2005, including this proposed site.
 - 4.6.1.2 There has not been significant enough house building to either alter the neighbourhood, or warrant a new pharmacy within the neighbourhood.
 - 4.6.1.3 The population are adequately served by the existing pharmacies in Lymm and by the significant collection and delivery services already provided by these pharmacies and Click Trading Ltd.

- 4.7 These are H&S arguments, these are the decisions already made by the Litigation Authority regarding Lymm.

Boots UK Ltd

- 4.8 Boots agree with the PCT decision to reject the application and their reasoning.
- 4.9 As the Appeals Authority will be aware, an application for preliminary consent in the Lymm neighbourhood was rejected at appeal in August this year (Case Reference SHA/15117).
- 4.10 When determining the appeal, the panel adopted the neighbourhood recommended by the oral hearing panel as that proposed by the PCT. This definition included the area of Oughtrington. Boots are not aware of any significant changes in the area in the short time since the previous decision that would lead to the neighbourhood being defined otherwise.
- 4.11 The existing pharmacies provide patients with access to a choice of pharmaceutical services and providers. These pharmacies are conveniently located for patients visiting the surgeries in Lymm also are in close proximity to amenities that residents will access as part of the fabric of their everyday lives.
- 4.12 Boots pharmacy located at The Cross, provides advanced and enhanced services including Supervised Administration and Emergency Hormonal Contraception. It provides all such services that the PCT wish to commission.
- 4.13 Boots pharmacy has the facilities (including a consultation room), and the resources to provide further services should the PCT wish to commission them. Boots pharmacist is accredited to provide the smoking cessation services Boots believe are currently being considered by the PCT.
- 4.14 In addition to PCT commissioned services, Boots pharmacy also provides a free prescription collection service and free delivery to patients living within an approximate 10-mile radius of the pharmacy.
- 4.15 Pharmaceutical services are available from 8.30am until 6.30pm Monday to Friday and from 9.00am until 5.30pm on Saturday. The applicant is not proposing to offer hours of opening or services that if not already available, could not be commissioned from the existing contractors.
- 4.16 The appellant has failed to provide any indication of significant difficulties encountered whilst wishing to access pharmaceutical services in the area.
- 4.17 Car ownership in the Lymm ward is high with 87% of households having access to a least one vehicle (2001 census data). Car parking is available in the town centre and is free for the first two hours at Pepper Street Car Park. In addition there is a car park next door to the Boots Pharmacy owned by the Public House and who allow unlimited parking until 12 noon every day.
- 4.18 For those wishing to use public transport, services run regularly from the town centre along Rushgreen Road and on to Altrincham.
- 4.19 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

Pathvalley Ltd

- 4.20 There have been no complaints to Pathvalley's knowledge, regarding current pharmaceutical services in the area.
- 4.21 There are two pharmacies within the neighbourhood defined by the PCT – Pathvalley would agree with this neighbourhood, and it was accepted in the recent appeal (SHA/15117 6/8/09) were Mr T Hall's application was rejected.
- 4.22 The housing is low density, expensive housing.
- 4.23 Pathvalley agree with the reasons given by the PCT to reject this application.
- 4.24 Pathvalley request that the application be rejected on the grounds that it is neither necessary or desirable to secure the adequate pharmaceutical services for this area.

The Co-operative Pharmacy

- 4.25 The Co-operative Pharmacy writes to support the decision of Warrington PCT to not approve the above application.
- 4.26 The Co-operative Pharmacy would agree with the PCT that there have been no recent significant changes to the neighbourhood. Furthermore, it is for each contractor to determine their own business model and The Co-operative Pharmacy does not believe that the dispensing of prescriptions from an alternative site demonstrates an inability to cope with the volume of prescriptions issued.
- 4.27 Given the above, The Co-operative Pharmacy requests the appeals authority uphold the decision of Warrington PCT and determines that the application is neither necessary nor expedient.

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 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 expedient test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted the application was for inclusion in the pharmaceutical list at Unit 4, Heatley Mere, Chase Meadows, Lymm WA13 9UP.
- 5.7 The Committee, whilst aware of its previous decisions in the area, was also mindful of the need to consider the current application on its own merits.
- 5.8 The Committee noted reference by the applicant, to some prescriptions having been dispensed at locations other than where they were presented. The Committee was not persuaded that this information was indicative of a need to grant the current application.

- 5.9 The Committee noted the PCT's defined neighbourhood as shown on a map (circulated to parties) had been disputed by the applicant on appeal. The applicant's more restrictively defined neighbourhood excluded Lymm. In the applicant's view, due to distance, the populations would not regard themselves as neighbours of one another. The Committee considered the applicant's arguments fell short of demonstrating conclusively that their neighbourhood should be preferred. The PCT's neighbourhood boundaries were based on logical features in the area. After having considered the information in respect of neighbourhood, the Committee decided to adopt the PCT's definition for the purposes of determining the appeal.
- 5.10 The Committee mindful of the applicant's reference to their own defined neighbourhood containing a population of 3,000 people, thought it reasonable to conclude that the population in the PCT's defined neighbourhood would be larger still. That said, the Committee would have to consider a range of factors before determining whether or not the proposed pharmacy was necessary or expedient to secure the adequate provision of services.
- 5.11 The Committee noted there are a limited number and range of services in Oughtrington. Whilst the Committee did not doubt the available services would be utilised, it was likely that many people would gravitate towards Lymm for services including those provided by their GP, during the course of their everyday lives.
- 5.12 The Committee noted the applicant's assertion that new housing was continuing at 'various sites in the Lymm neighbourhood as defined by the PCT.' However, the applicant had not provided information to show the nature, extent and time scale for any new developments. The Committee considered the applicant had failed to demonstrate that any new developments would result in a gap in services that the proposed pharmacy could fill, or that existing pharmacies would be unable to cope with any increased demand for services.
- 5.13 The Committee noted the applicant's claim that the closest existing pharmacy is over a mile away from the proposed site and many patients have difficulty accessing services, not least because of limited parking in Lymm. Boots responded that there is car parking in the town centre car park, as well as additional parking opportunities elsewhere. Bus services run regularly from the town centre along Rushgreen Road. On balance, the Committee considered the population has reasonable access to existing contractors.
- 5.14 The Committee noted the two existing pharmacies are operated by different contractors, there is therefore, a reasonable choice of services and services provider in the neighbourhood. There are two GP surgeries.
- 5.15 The Committee noted applicants proposed services and opening hours but had no reason to believe that these are not already, or cannot be provided by existing contractors.
- 5.16 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, 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 or 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.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr A Kenney, Click Trading Ltd – Applicant/Appellant
Ms C Green - Lloyds Pharmacy Ltd
Mr T Hall – Hall & Stevens Family Pharmacy
Ms J Watson – Boots UK Ltd
Mr A Patel – Pathvalley Ltd
Mr D Gilder – Sainsbury's Supermarkets Ltd
Mr S Hay – The Co-operative Pharmacy
Ms K Saunders – Superdrug Stores plc
Ms A Banks – North Cheshire, St Helens & Knowsley LPC