

APPEAL AGAINST SURREY PCT DECISION TO REFUSE BOOTS UK LTD APPLICATION FOR MINOR RELOCATION UNDER 500 METRES, FROM 21 STAINES ROAD WEST, SUNBURY ON THAMES TW16 7AB TO SUNBURY CROSS SHOPPING CENTRE, STAINES ROAD WEST, SUNBURY ON THAMES TW16 7AZ

1 The Application

By application dated 10 June 2009, Boots UK Ltd (“the Applicant”) applied to Surrey Primary Care Trust (“the PCT”) for minor relocation under 500 metres, from 21 Staines Road West, Sunbury on Thames TW16 7AB to Sunbury Cross Shopping Centre, Staines Road West, Sunbury on Thames TW16 7AZ. In support of the application it was stated:

- 1.1 The provision of services would be continuous.
- 1.2 The distance of the proposed move by way of the most practicable route is 350 metres. The route was described as:

‘Turn right along Staines Road West to the pedestrian crossing lights. Cross at the lights then turn left, walk along Staines Road West to the entrance to the shopping centre and the Boots store is on the left hand side.’

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 7 July 2009 from NHS Primary Care Support Service (on behalf of the PCT) states:

- 2.1 The PCT noted that, although the existing and proposed locations were very close “as the crow flies”; they were on different sides of a very busy urban dual carriageway which had limited crossing points. Barriers were in place on both sides of the road and in the central reservation to enforce these crossing points. A site visit had been carried out which indicated that this dual carriageway would form a physical barrier that would make for difficult access for those patients, or potential patients, who currently used the pharmacy in its present location.
- 2.2 The boundary for the neighbourhood was therefore determined as:
 - 2.2.1 North — the boundary between Surrey PCT and Hounslow PCT to where it crosses Hanworth Road (A316) in the east and Feltham Road (B377) in the west.
 - 2.2.2 East — southwards along the Hanworth Road to Sunbury Cross.
 - 2.2.3 South — from Sunbury Cross westwards along Staines Road along Staines Road West to junction with School Road (B378).

2.2.4 West — northwards along School Road to its junction with Feltham Road and then eastwards along that road until it meets the PCT boundary.

2.3 This meant that the application must be refused as it failed to meet the criteria for such a move in that the current and proposed sites were not within the same neighbourhood.

2.4 The application for a Minor Relocation under 500 metres was therefore not Granted.

3 **The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 21 July 2009, the applicant appealed against the PCT’s decision. The grounds of appeal were:

3.1 The applicant disagrees with the PCT decision to reject the application and their reasoning.

3.2 The applicant believes that the railway line just to the south of Staines Road West is more suitable as a southern boundary than that of Staines Road West defined by the PCT. The applicant believes that people living on either side of Staines Road West use the shopping facilities on both sides the road as part of their daily lives, and cross easily using either the pedestrian controlled lights or the underpass.

3.3 The applicant therefore believes that the above minor relocation application meets criteria under Regulation 6:

3.3.1 In the same neighbourhood.

3.3.2 Under 500 metres.

3.3.3 Has no physical barriers between the premises.

3.3.4 There will be no interruption to services.

3.4 The applicant respectfully urges the Litigation Authority to uphold this appeal accordingly.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

Boots UK Ltd (Applicant)

4.1 The applicant would like to clarify the suggested neighbourhood following a further site visit. The southern boundary should run along the Staines Reservoirs Aqueduct from the junction of School Road (B378) and Staines Road West to where it meets the A316. The applicant has annotated the map sent with the NHSLA’s letter and returns it herewith.

Lloyds Pharmacy Ltd

4.2 Lloyds would agree with the comments made by the PCT and would submit that Staines Road is a natural neighbourhood boundary.

4.3 For the above reasons Lloyds do not believe the criteria for a minor relocation has been satisfied therefore they respectfully ask the Appeal Unit to uphold the decision of the PCT.

NHS Primary Care Support Service (on behalf of the PCT)

- 4.4 Taking the criteria set out by the appellant (although the PCT does not, with respect, accept that Regulation 6 sets them out quite as clearly as is suggested) it is accepted that these are broadly the criteria applied in such cases and follow the principles established in various judgements, in particular the “Suri & Gompels Case”.
- 4.5 Of those points listed by the appellant, the PCT does not dispute two of them, namely:-
- 4.5.1 That the distance between the two sites is under 500 metres.
- 4.5.2 That there will be no interruption to services (based on the information currently available to the PCT).
- 4.6 However, contrary to the appellant’s assertion, the PCT is firmly of the view that the A308, Staines Road West is a physical barrier as described in Para 3.32 (iii) of the Department of Health publication “Information for PCT (Control of Entry) revised February 2007. In the PCT’s opinion that barrier would inhibit persons who attend the pharmacy in its current location from accessing the pharmacy should it relocate as proposed. The A308 is a busy urban dual-carriageway with an additional service road running parallel to the five lanes (two in each direction with an additional bus lane on the eastbound carriageway) of the road itself. This means that persons wishing to cross from one side to the other would need to negotiate a total of 6 lanes of traffic. The pavement is separated from the dual-carriageway by barriers on both sides of the road restricting pedestrian access to controlled crossing points.
- 4.7 There is a precedent for an urban dual-carriageway being a boundary between two neighbourhoods, the relative reports being referenced SHA/13550 and SHA/14089.
- 4.8 Case reference SHA/13550 says:
- “5.9 On the basis of the above the Committee determines that Albion Way constitutes a boundary between the neighbourhood in which the applicant is presently sited and that which it seeks to relocate to. As the move would be between neighbourhoods, the requirements of Regulation 6 are not met and the application refused”.
- 4.9 Case reference SHA/14089 says:-
- “5.1 The Committee noted that the neighbourhood of the proposed site.. is effectively separated from the neighbourhood of the applicant’s current site . . . by Albion Way. The Committee is mindful that this is consistent with previous cases in this area.”
- 4.10 The PCT accepts that there are pedestrian controlled crossing points along that road (although the appellant makes no reference to either the location or number) but the shortest distance between the two sites using the nearest of those crossings was measured as 349 metres and even that crossing had further barriers in the central reservation to provide a refuge for those on foot. The official speed limit along this stretch of road is 40 m.p.h. and the positioning of a speed camera some 200 metres west of the current pharmacy site would suggest that this limit is liable to be broken. During that same site visit, very few pedestrians were seen to use the nearest crossing which does call into doubt the appellant’s statement that those “... living on both sides of Staines Road West use the shopping facilities on both sides of the road as part of their daily lives and regularly cross (the road)”
- 4.11 The letter of appeal also makes reference to “the underpass”, again without specifying a location. It is assumed that reference is being made to the underpass complex situated at the eastern end of Staines Road West where it pedestrians can pass under the A308, which itself, at that point, passes underneath the elevated section of the M3. This underpass complex is a network designed to enable

pedestrians to cross to various sides of the junction and its very presence suggests that the planning authorities consider that the roads are too difficult/dangerous to cross by more conventional, surface means. The underpass can be accessed by either ramp or steps but has a rather low ceiling and is somewhat claustrophobic. There is lighting installed although its effectiveness could not be judged during the daytime site visit when the weather was bright and sunny. Some of the walls are decorated in what appear to be "official graffiti" (i.e. applied as part of a community project rather than randomly by individuals). This is predominantly medium to dark blue in colour and does little to help the area feel light and spacious. Although the distance between the two sites via the underpass was not measured it would appear to be about the same as that via the surface route. There were a few people using the underpass during the site visit which took place at a weekday lunchtime but it may not be as well used during winter afternoons when the light is fading.

- 4.12 The current premises are situated in a well patronised parade of shops that, in addition to the pharmacy, includes range of small shops and other facilities including a branch of Barclays Bank an optician, a building society, a baker, small Co-op store with a Post Office and a library. Parking on the service road that runs in front of the shops is free and vehicles can be left for up to two hours. The parking at the proposed site requires payment and, although there are spaces at ground level in front of the proposed site these were all full during the site visit and cars appeared to have to use the adjacent multi story car park.
- 4.13 The appellant appears to be confused about the local geography as they suggest in their letter that "...the railway line just to the south of Staines Road West is more suitable as southern boundary than that... defined by the PCT". In fact, there is no railway line "...just to the south of Staines Road West ." The nearest railway line is the Shepperton Branch Line operated by South West Trains and which links Shepperton at its southern end with, eventually, London Waterloo. This line runs to the south east of the M3 and not Staines Road West. Perhaps the appellant, by just looking at a map, has mistakenly identified the Staines Reservoirs Aqueduct (which does run just south of Staines Road West) as a railway line. This basic error demonstrates a lack of understanding of the local geography and suggests that no actual site visit has been carried out before writing the letter of appeal.
- 4.14 In summary, the PCT remains of the view that this part of Surrey is undeniably quartered by the A308 and the M3 (which becomes the A316 just north of where it crosses the A318). Those are urban dual-carriageways and a motorway, each of which are neighbourhood boundaries which are, in themselves, physical barriers. As such, the Staines Road West (A308) is a neighbourhood boundary between the existing and proposed sites and the PCT considered that the application made under Regulation 6 thus failed to meet the criterion of any such move being within the same neighbourhood.
- 4.15 Accordingly, the PCT respectfully requests that the Appeal Unit dismisses the appeal.

5 Further Comments

Boots UK Ltd (Applicant/Appellant)

- 5.1 Although the applicant does not dispute the PCT view that Staines Road West is a busy urban dual carriageway, people do shop at the outlets on both sides of the road. Patients have a choice of access between the two sites (maps enclosed):
- 5.1.1 Via the pedestrian controlled lights situated approximately 150 metres west of the current location. The applicant says that the speed camera acts a deterrent to prevent the traffic from exceeding the speed limit on Staines Road West.

- 5.1.2 The underpass situated approximately 20 metres from the current location and making the journey even shorter at a distance of approximately 220 metres.
- 5.2 Also, the two GP surgeries serving the area are situated outside the neighbourhood to the south of Staines Road West. This would therefore necessitate patients getting across Staines Road West to access the surgeries. Both of the Boots UK Ltd pharmacies provide pharmaceutical services to these patients.
- 5.3 The applicant suggests that if the Panel have any doubt regarding the ease of access; the fact that patients shop both sides of the road, or the fact that patients have to cross Staines Road West and go outside of the neighbourhood to access the GP surgeries, a site visit and Oral Hearing may be beneficial.

6 Preliminary Consideration

- 6.1 The Committee noted that in accordance with Regulation 6(3)(a)&(b) the PCT was required to grant the application. There was no suggestion that the PCT had considered the application should be determined as if it was one for 500 metres or more. The applicant is afforded a right of appeal in Regulation 29(2) against the PCT's decision under regulation 6(3).
- 6.2 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.
- 6.3 It also had before it the responses to the Authority's own statutory consultations.
- 6.4 On the basis of this information, the Committee considered that it was necessary to hold an Oral Hearing, before determining the appeals.
- 6.5 The Committee does not wish to inhibit the Oral Hearing Panel's consideration of this case, but requests the Panel to particularly look at the following:
- 6.5.1 The Panel are requested to recommend with reasons, the most appropriate neighbourhood for the proposed pharmacy.
- 6.5.2 The Panel are requested to advise the distance between the proposed and existing premises.
- 6.5.3 The Panel are requested to advise if the proposed move is a minor relocation in accordance with the Regulations.

Mr. H. Blackman was appointed to conduct an Oral Hearing, to take evidence and to make a recommendation to the FHS Appeal Unit. The Hearing was held at the offices of the Surrey Primary Care Trust, Pascal Place, Randalls Research Park, Randalls Way, Leatherhead, KT22 7TW on 13th November 2009 at 1.00pm. A list of those attending is attached at Appendix 1.

7 RELEVANT BACKGROUND

- Map showing PCT and Panel defined neighbourhood (Pink) Appendix 2
- Map showing Applicant's defined neighbourhood (Pink+Yellow) Appendix 2
(NB: Tesco Pharmacy No:3 is incorrectly placed)
- Index
- Enlarged street plan showing Present site and Proposed Site Appendix 3

- Aerial map illustrating general view of Sunbury Appendix 4
- Aerial map illustrating general view of Sunbury Appendix 5

8 SITE INSPECTION

- 8.1 Sunbury-on-Thames used to be an Urban District Council, historically part of the former County of Middlesex. In 1965, following the creation of the Greater London Council, the majority of Middlesex was absorbed into Greater London. However, Sunbury-on-Thames was instead transferred to Surrey. In 1974, Sunbury ceased to retain the status of an Urban District and has since formed part of the Borough of Spelthorne with the northern boundary co-terminus with that of Greater London. Sunbury has become a largely suburban town with a number of high rise office buildings and industrial estates clustered around the M3, the A316 (the London bound extension of the M3) and the A308 Staines Road West that radiates out of the large flyover/roundabout interchange with Junction 1 of the M3. It is the immediate area on the western side of this interchange that is the subject of the instant application.
- 8.2 The applicant's present pharmacy is in a lengthy parade of shops behind a service road, known as The Parade, alongside the north side, extreme eastern end, of Staines Road West, at the point where Staines Road West enters the ground level roundabout of the M3 interchange. The shopping parade and service road extends round the western face of the roundabout as far as Vicarage Road. For clarity, I attach as **Appendix 3** a large scale street plan. The applicant's present pharmacy is shown at the green square.
- 8.3 The shops along The Parade are mostly single units as is the Pharmacy, which trades under the name of Alliance Pharmacy. There is a range of goods and services on offer that include cafes and fast food take-aways, estate agents, bookmaker, Building Society branch, Co-op with Post Office, newsagent, bakery and optician. These shops, built with living accommodation above, are of the 1930's style of the residential properties that spread northwards behind the shops. Cars may park on-street along The Parade and the initial period is free. Moving west beyond the end of this parade of shops, there are commercial buildings of more recent construction, probably dating from the late 1970s/early 1980s. There is a public library, a Barclays Bank and two substantial office blocks, seemingly empty. Beyond Green Lane there is a large, open air, used car lot, then some terraced cottages of the inter war years, the 1920s/1930s. Behind this frontage, extending to the north, there is a pleasant residential area.
- 8.4 The proposed site is within the Sunbury Cross Shopping Centre at the address of an existing and trading Boots Pharmacy. The two sites are almost within line of sight of each other. There are two pedestrian routes between the sites. The immediately obvious route is at ground level by walking west along The Parade as far as Barclays Bank where there is an uncontrolled crossing point across The Parade roadway. There are modern kerb drops here and throughout the entire crossing process. This takes you to the reservation dividing The Parade from Staines Road West and leads to a light controlled pedestrian crossing to get across the east bound carriageway of Staines Road West, the inner lane of three being a bus lane. Crossing this carriageway, you arrive onto the central reservation that dog legs to the next stage of the crossing, which is another light controlled pedestrian crossing. This takes you across the west bound carriageway of Staines Road West and leads you to a small

central reservation in the mouth of Crossways. Crossways is the ingress/egress road for the multi storey car park that serves the Sunbury Cross Shopping Centre. It is also the egress road for traffic using the on-site parking spaces in the Shopping Centre. The final sector of this journey is to cross the two traffic lanes of Crossways using a traffic light controlled (but not pedestrian controlled), stud only, crossing point to reach the pavements, enter the shopping precinct and arrive at the proposed site. In so doing, over this final sector, pedestrians need to be aware of vehicles manoeuvring while parking.

- 8.5 The distance between the two sites will vary slightly and depends on one's final approach to the proposed site via the entry points into the Sunbury Cross Shopping Centre. I measured the distance as 298 metres using a calibrated surveyors' wheel.
- 8.6 I noted that there are pedestrian guard rails along both sides of Staines Road West as well as along the central reservation. It is not possible to cross Staines Road West other than at the designated crossing point within the guard rail sector. Furthermore, because of the width of the carriageways and the traffic flow, it would not seem to be advisable to cross anywhere other than at light controlled crossing points, the nearest other of which are at Escot Road, the entrance road to the Tesco Extra, and, further west, the A244 cross roads.
- 8.7 There is an alternative route using a pedestrian foot tunnel under Staines Road West. One entrance to the tunnel is by two flights of steps accessed just outside the applicant's pharmacy, or by a slope accessed further along The Parade toward Vicarage Road. The slope gradient borders on steep, having regard to the mobility of certain users; a further complication is that half way down there are two half width barriers so positioned as to require careful negotiation by those handling children's buggies. I observed one such lady with a small child in a wheel chair going both down the slope then up the other side, which is a V slope. As a matter of opinion, and it should be rated no higher than that, it seemed to me that she was not finding it the easiest of routes. The tunnel itself has a low ceiling with florescent lighting strips on one side of it. The lighting is not well maintained, the fittings are dirty and it felt dank, even on a dry day. I did not observe any security cameras. One could well imagine that in conditions of inclement weather or darkness, neither of which pertained on the day of my visit, the experience of using that route is unlikely to be inviting to many people. The exit emerges in the Shopping Centre and the proposed site can be reached without any traffic problems. I did not measure this route or that using the steps to descend to the underpass; neither route would be further than the surface route, but in any event, any differences of distance are unlikely to be a material consideration.
- 8.8 For those who currently use their car to access the present site, the road approach can be only from the west, travelling in an easterly direction, and then filtering into the service road of The Parade. It is not possible to make a right turn into the Shopping Centre from the east bound carriageway of Staines Road West. Getting into the Shopping Centre from the east bound carriageway will involve negotiating the roundabout complex under the M3 and returning along the west bound carriageway.
- 8.9 The Sunbury Cross Shopping Centre appears to date from the 1980s and enjoys an anchor tenant of a Marks and Spencer Simply Food store. All the retail units are at ground level with immediate access from onsite parking bays. Parking charges are levied; the initial rate is £1 for two hours. As well as Boots, retail units include national representations such as Halfords, Laura Ashley, KFC, Subway, Blockbusters, and

Ladbroke's and there are several specialist shops. Above the shops there are four apartment blocks, two of six storeys each and two of 13 storeys each, as well as the 14 storey Chubb office block. Alongside, in Crossways, is Kempton Point, an unoccupied modern office block with incorporated private car parking. Continuing to the end of Crossways there is a multi-storey car park located above the Marks and Spencer store.

- 8.10 Moving westwards along the south side of Staines Road West there a high rise 16 storeys apartment block, and low-rise blocks of flats and maisonettes that continue in a similar vein to a point briefly beyond the A244. Thereafter, the south side of Staines Road West is dominated for a distance by playing fields and a reservoir.
- 8.11 Apart from the two office buildings and retail shops along the frontage of Staines Road West at the extreme eastern end, close to the M3 roundabout (The Parade), to the north side of Staines Road West it is wholly residential, predominantly comprising good sized semi detached houses and bungalows built in the 1930s but also with pockets of 1950s infill. There are no high rise blocks of flats or apartments in this northern sector.
- 8.12 For completeness, I drove around the general area north and south of Staines Road West and visited the Tesco Extra store to the south of the Sunbury Cross Shopping Centre. This can be accessed on foot from the Shopping Centre using a footbridge over the Staines Reservoir Aqueduct. The footbridge is hump backed with steps over and adjacent slopes and platforms for those unable to use the steps. Vehicular and pedestrian access is by way of Escot Road off Staines Road West, again crossing the Aqueduct over a humpback bridge. There is free parking for several hundred cars. The Tesco pharmacy is at the rear of the sales floor.
- 8.13 The terrain throughout is level.

9 SUMMARY OF ORAL EVIDENCE

9.1 Chairman's opening remarks and preliminary points

- 9.1.1 The Chairman identified and introduced the Parties and explained the procedures to be adopted. The Parties were informed that these procedures would be a rehearing and reconsideration of all the facts as they currently stand.
- 9.1.2 The Parties were informed that the Chairman had read the bundle of 32 pages together with the Appeal Committee Minute. The Minute was accepted by the Parties as a proper summary of the written representations and, accordingly, were accepted as having been read into the record.
- 9.1.3 The Chairman identified the issues relevant to a minor relocation. There are four criteria: same neighbourhood, same and continuous pharmaceutical services, same population served and distance. All have to be satisfied for the application to succeed.
- 9.1.4 The Chairman had conducted a site inspection of the area on foot and by car and he informed the Parties of what he had seen and this is set out in final form at #8 above.
- 9.1.5 The Chairman noted that the maps supplied in the bundle were small scale and lacking in detail of the immediate area under consideration. With the consent of the Parties he introduced, for illustrative and explanatory purposes

only, a large scale street plan of the present and proposed sites together with additional aerial view prints of the surrounding areas. These are labelled at #7 above.

- 9.1.6 The Parties were informed that the Hearing would result in a recommendation to the FHS Appeal Unit and a committee of that body would issue a decision in due course.

9.2 Mrs. J. Watson (on behalf of Boots UK Ltd – Applicant)

- 9.2.1 Mrs Watson requested that the applicant's southern boundary of the neighbourhood defined on Appendix 2 should be amended as marked in yellow. The boundary line north of Staines Road West, as defined by the PCT is accepted. The PCT's defined southern boundary remains as shown along Staines Road West marked in pink. It is accepted that this defined neighbourhood is dissected north/south along the A244 by the Sunbury Common Ward boundary.
- 9.2.2 The applicant's defined neighbourhood includes the areas north and south of Staines Road West. The shop owners on both sides of that road consider themselves to be within the Sunbury Cross Shopping Centre.
- 9.2.3 Both side of Staines Road West have facilities used and accessed by those living throughout the applicant's defined neighbourhood, They do so by using the controlled crossing points. There are drop kerbs throughout the route and waiting times are not long. The Tesco Extra store is readily accessible from the Sunbury Cross Shopping Centre.
- 9.2.4 Pedestrians may also use the pedestrian subway, which is signposted. The subway is not as untidy as suggested by the PCT. It is swept and lit. It provides a direct, traffic free, route between the sites. It is quite well used as are the pedestrian crossings. It was observed as being well used by children on their way to and from school.
- 9.2.5 The multi-storey car park within the Sunbury Cross Shopping Centre, close to the proposed site, does contain an area for free parking for up to at least one hour. There are lifts to the ground level exiting just a short distance from the proposed site. For those travelling to the Shopping Centre by public transport, there are bus stops on both sides of Staines Road West.
- 9.2.6 Patients are used to moving around the area to access services. Location A on **Appendix 2** is the Sunbury Health Centre. Most of the prescriptions dispensed at the Alliance Pharmacy and the Boots Pharmacy originate from that Health Centre. We do not have precise figures for the other surgeries as we retain a record only if there are more than 200 prescriptions from any one source. The distance from the Health Centre to the present and proposed sites via the subway is just over half a mile. The secondary schools for the area are also to the south of the M3.
- 9.2.7 In summary, the continuity of service and pharmaceutical services is not in dispute. Both the present and proposed sites are in the same neighbourhood and the distance is short via the crossing points. Our application meets the criteria required for a minor relocation.
- 9.2.8 **In response to questions**, Mrs. Watson said that after conducting her own site visit, she had revised the applicant's definition of the southern boundary of the neighbourhood in that it should follow the M3 further south and include the water works before rejoining the northern section as defined by the PCT at School Road junction:

The route between the sites was convenient with obvious crossing points and similar distances. With regard to the 40mph speed limit, Staines Road West was safe to cross at the pedestrian crossing and the subway is an alternative: The significant proportion of prescriptions dispensed at the present and proposed sites originate from the Sunbury Health Centre (marked **A** on the map) although there are no figures to show what proportion are dispensed for patients coming direct to the pharmacies from the Health Centre. She accepted that repeat prescriptions may comprise between 70%-85% of the totals dispensed:

Around the proposed site, if the surface parking spaces were full, the multi-storey car park is available and there is a reserved section for a short period of free parking:

The Boots pharmacy, the proposed site for the relocation, is a 100 hour pharmacy. The Boots branch had been on that site since 1996 but the pharmacy did not open until a Regulation 13 application was granted in 2006. The prescription numbers of the Alliance pharmacy and the Boots pharmacy are now similar but the trend is for the Boots figures to be increasing and the Alliance figures to decrease.

9.3 Mr. J. Billett (Representing Surrey Primary Care Trust)

- 9.3.1 Mr. Billett said that Staines Road West is a physical barrier. It is accepted that there is a crossing point but one has to cross a number of carriageways; some of these do not have pedestrian controlled lights.
- 9.3.2 The route between the present and proposed site do not provide convenient or easy access. The PCT has a responsibility to be concerned about any problems faced by people having to cross busy roads. People will have to make a choice to cross or not to cross Staines Road West.
- 9.3.3 It is suggested that people prefer to go where there is free parking, which is the case along The Parade, at the present location of the applicant's pharmacy. Parking is not free in the Sunbury Cross Shopping Centre.
- 9.3.4 Over the past twelve months the present pharmacy and the Boots pharmacy (the proposed site) have achieved very similar dispensing figures.
- 9.3.5 The present and proposed sites are not in the same neighbourhood. Staines Road West is a natural boundary and the customers of the present pharmacy will find the proposed pharmacy in Boots more difficult to access.
- 9.3.6 **In answer to questions**, Mr. Billett said that he had not noticed that there is a sign on entering the multi-storey car park advertising a reserved section that allows an initial period of free parking for shoppers using the Sunbury Cross Shopping Centre.

9.4 Final statements

- 9.4.1 Mr. Billett said that the two sites are separated by a busy urban motorway that creates a physical barrier and forms a neighbourhood boundary The appeal should be dismissed.
- 9.4.2 Mrs. Watson said it was important to consider how people move around the area for a variety of reasons. They access both sides of Staines Road West in the course of their daily lives. She did not find crossing Staines Road West at the crossing pints provided either dangerous or difficult.

10 KEY FACTS

- 10.1 The present pharmacy is situated on a service road, The Parade, alongside the westbound carriageway of Staines Road West adjacent to the traffic distributing roundabout beneath Junction 1 of the M3 motorway.
- 10.2 Staines Road West is a busy urban dual carriageway providing access to Junction 1 of the M3 motorway.
- 10.3 In the immediate area of the present and proposed site for the applicant's pharmacy, Staines Road West is flanked by pedestrian guard rails as well as along the central reservation. For all practical purposes there are just two controlled crossing points between the present and proposed sites viz: the surface crossing point and the pedestrian subway, both described in detail at #8.4 and #8.7 above.
- 10.4 The present site is located in a long established parade of shops of a similar age with the substantial majority of the residential properties to the north. The proposed site is located in the designated Sunbury Cross Shopping Centre within an existing Boots the Chemist store that currently operates a 100 hour pharmacy.
- 10.5 Vehicle access to the present site is along a service road adjacent to the east bound carriageway of Staines Road West. Vehicle access to the proposed site is from the west bound carriageway only. Vehicles travelling along the east bound carriageway intending to access the proposed site would first have to negotiate a large roundabout passing under the M3 motorway.
- 10.6 The distance between the two sites, using the available routes, is no more than 300 metres.

11 CONSIDERATION OF WRITTEN AND ORAL EVIDENCE

- 11.1 This is an application by Boots UK Ltd to relocate a pharmacy, currently trading as Alliance Pharmacy but in the ownership of Boots UK Ltd, located at 21, The Parade, Staines Road West, Sunbury on Thames, TW16 7AB. The proposed new location is in The Sunbury Cross Shopping Centre, Staines Road West, Sunbury on Thames, TW16 7AZ. The proposed site is within an existing Boots store operating a 100 hour pharmacy. The application is for the move to be considered a minor relocation.
- 11.2 In these considerations regard will be given *inter alia* to the judicial guidance contained in the judgements in Boots the Chemists(Northern Ireland)(*The Bangor Case*), R -v- Yorkshire Health Authority ex parte Suri & Gompels and R -v- Cumbria FPC ex parte Boots the Chemists Limited, as well as to Regulation 6(1) and Regulation 5(1)(b) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) and the associated Information for Primary Care Trusts.
- 11.3 The PCT, in their decision letter 7th July 2009, determined that Staines Road West is a busy urban dual carriageway that is a neighbourhood boundary and forms a physical barrier 'that would make for difficult access for those patients, or potential patients, who currently use the pharmacy in its present location'. The criteria of same and continuous pharmaceutical services and distance, are not contentious points. Lloyds Pharmacy, in a letter dated 11th August 2009 support the decision of the PCT on the grounds that the present and proposed sites are in different neighbourhoods.
- 11.4 The applicant's present pharmacy is in a parade of local shops built around 1930 to serve the associated estate(s) of individual residential properties immediately to the north. These estates include a number of infill properties dating from the 1950s. The only commercial properties of note, apart from the retail shops are a couple of modern office buildings and the Library fronting the northern side of Staines Road West.

- 11.5 South of Staines Road West the properties and geography differs. At ground level there is the modern purpose built Sunbury Cross Shopping Centre above which there are medium and high rise blocks of flats. There is a multi-storey car park and office buildings. There is the Tesco Extra store to the south. Moving further west there are low rise and high rise residential blocks backing on to the aqueduct but only as far as just past the A244. Then there is open green space. South of the aqueduct there is the reservoir, a large pumping station and, predominantly, trading estates. There is a minority area of residential property but the vast majority of the buildings appear to date from no earlier than the 1980s. The differences between the north and south sides of Staines Road West are illustrated on **Appendices 4 and 5**.
- 11.6 The differences between the areas to the north and south of Staines Road West may thus be summarised; to the north, a long established residential area dating from the 1930s with some 1950s housing, of individual properties and an associated local shopping parade with very little other commercial intrusion: to the south, substantial retail properties including a Tesco Extra, with major car parking facilities, all of a type usually attracting trade from a wide catchment area; there are substantial areas of green open spaces as well as the reservoir and pumping station and trading estate and a residential element of modern low, medium and high rise blocks and some individual housing. There is also an age difference between the residential properties of up to 50 years at least. Staines Road West divides these two distinct areas and I conclude, therefore, that the neighbourhood of the applicant's present pharmacy does not include the site of the proposed relocation.
- 11.7 As to neighbourhood boundaries, I consider Staines Road West forms the southern boundary of the neighbourhood within which the applicant's present pharmacy is located. As to the west, north and east boundaries, I am content for the purposes of this application they remain as marked in pink on **Appendix 2**, there being no disagreement on the latter point as between the applicant and the PCT, and I so recommend.
- 11.8 Irrespective of neighbourhood, I have considered whether or not essentially the same population might be served at the proposed site and I use Sir Ralph Gibson's ex parte Gompels and Suri adoption of the terminology used in the Appeal Units decision letter dated 15th February 1994.
- 11.9 What is the likely relevant population served by the applicant's present pharmacy? The date that pharmacy was first opened by the applicant, or their predecessors in title, was not known to the Parties. However, a pharmacy in that location is reasonably likely to have been intended to serve the residential population to the immediate north particularly as the parade of shops was built at, or around, the same time as the majority of those residential properties. The Sunbury Shopping Centre did not exist and was built in the years after the completion of the M3 in 1974.
- 11.10 The shopping facilities within the Sunbury Cross Shopping Centre are of a different style and age and the Boots pharmacy, the proposed site, has traded for just three years. With due respect to the point made by Mrs. Watson, the shops along The Parade and the shops in the Sunbury Cross Shopping Centre provide two different shopping concepts and serve different populations. The Boots pharmacy has never 'served', in the regulatory sense, the population to the north of Staines Road West, although those residents may now use the Boots pharmacy as a matter of choice just as they may use the Tesco pharmacy.
- 11.11 The process of crossing Staines Road West is fully described above. It can be done but it is not a seamless operation, particularly for those with impaired mobility or managing children. I conclude, therefore, that the Alliance Pharmacy in the proposed relocated position would not be as conveniently available to the relevant population served at present.
- 11.12 I would dismiss the Appeal, and so recommend.

12 RECOMMENDATION

12.1 That the Appeal against the decision of Surrey Primary Care Trust to refuse an application from Boots UK Ltd (trading as Alliance Pharmacy) to relocate from 21, Staines Road West, Sunbury on Thames, TW16 7AB to Sunbury Cross Shopping Centre, Staines Road West, Sunbury on Thames, TW16 7AZ should be dismissed and the application thereby not granted.

13 REASONS

13.1 The proposed site is not in the same neighbourhood as the present site and essentially, the same population will not be served. The application does not meet the criteria for a minor relocation.

Howard Blackman
Chairman
Pharmacy Oral Hearing