

23<sup>rd</sup> December 2009

**REF: SHA/15401**

**APPEAL AGAINST TAMESIDE AND GLOSSOP PCT  
DECISION TO REFUSE AN APPLICATION BY ASSURA  
PHARMACY LTD FOR PRELIMINARY CONSENT PRIOR  
TO INCLUSION IN THE PHARMACEUTICAL LIST AT THE  
SHOPS, HUDDERSFIELD ROAD (BETWEEN GRENVILLE  
STREET AND BESOM LANE), MILLBROOK,  
STALYBRIDGE, APPROX SK15 3ET**

**1 The Application**

By application dated 4<sup>th</sup> June 2009, Assura Pharmacy Ltd ("the Applicant") applied to Tameside and Glossop Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at the shops, Huddersfield Road (between Grenville Street and Besom Lane), Millbrook, Stalybridge, Approx SK15 3ET. In support of the application it was stated:

- 1.1 This application is both necessary and desirable in order to secure within the neighbourhood from which the Applicant intends to provide the services, adequate provision of pharmaceutical services.
- 1.2 The proposed neighbourhood is Millbrook:
  - 1.2.1 Northern boundary: the open land running to the north of Standrick Hill Rise, marking a significant change in housing types.
  - 1.2.2 Eastern boundary: The open land.
  - 1.2.3 Southern boundary: Walkerwood Drive across Huddersfield Road and following Cedar Avenue to the canal.
  - 1.2.4 Western boundary: The canal.
- 1.3 A map of the proposed neighbourhood is included.
- 1.4 The neighbourhood population was approximately 3,500 based on the 2001 census. Since this time there has been considerable residential development in the neighbourhood which will have increased the resident population significantly.
- 1.5 The proposed neighbourhood contains a range services with the application site offering a range of shops, including a Post Office and off street parking. The neighbourhood does not contain a pharmacy.
- 1.6 The nearest pharmacy (Co-op Pharmacy, Lockside Medical Centre) is nearly 1 mile away by road to the south of the application site. This distance combined with the terrain make this journey difficult for anyone without private transport.
- 1.7 This application is both necessary and desirable in order to secure adequate pharmaceutical service in the neighbourhood.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 28<sup>th</sup> September 2009 states:

- 2.1 After careful consideration of all the relevant evidence the Panel decided not to approve the application for the following reasons:

- 2.1.1 The Panel noted that patients of the neighbourhood routinely have to travel into Stalybridge Town Centre to access all their service needs, along with the services provided by GP surgeries. The Panel was satisfied that an adequate provision of pharmaceutical services already exists (*sic*). The Panel recognised the need to access GP surgeries to obtain prescriptions prior to the need of a pharmacy to dispense.
- 2.1.2 The Panel considered the transport links from Millbrook in to the Town Centre were good. There is a main bus route along Huddersfield Road which provides 8 buses per hour to Stalybridge and 2 to Mossley, this is in addition to a local Ring & Ride service.
- 2.1.3 The Panel noted that all pharmacies in Stalybridge Town Centre offer a home delivery service for patients with repeat prescriptions. As these are usually non urgent requests, patients can plan when and where they want the medication collected.
- 2.1.4 The panel assessed what other services are offered in the area. The main shop is The Mini Mart which offers a range of over the counter medicines. The location is such that it may well not be used routinely as it carries a limited range of fresh food, alcohol, soft drinks, snacks, newspapers and magazines and the residents of Millbrook would bulk buy in the town centre at Aldi or Tesco supermarket.
- 2.1.5 The Panel applied the necessary or desirable criteria together with the competition and choice and decided that the area is currently adequately serviced by the existing pharmacies offering sufficient choice.

### 3 **The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 5<sup>th</sup> October 2009, the Applicant appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 The PCT has not stated what, if any, neighbourhood definition was accepted when considering this application. Without knowing the PCT’s defined neighbourhood it is virtually impossible to comment on the PCT’s subsequent findings of adequacy and choice.
- 3.2 The PCT appear to have given no weight at all to the fact that planning permission has been approved for a medical centre in close proximity to the application site. The PCT were informed of this by letter dated 24<sup>th</sup> August 2009.
- 3.3 It is submitted that the PCT has given insufficient weight to the facilities and services around the application site. In addition to the Mini Mart there is a Post Office, off license and a range of other typical neighbourhood shops. It is submitted that residents of the neighbourhood would use these facilities on a regular basis and do not have to travel into Stalybridge Town Centre to access all their service needs, as stated by the PCT.
- 3.4 The PCT do not appear to have given any weight to the fact that the nearest pharmacy is nearly 1 mile away by road.

### 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.

ASSURA PHARMACY LTD

- 4.1 Neighbourhood
- 4.2 Assura proposed that the neighbourhood should be based upon the Millbrook community, with the following boundaries:
  - 4.2.1 Northern boundary: the open land running to the north of Standrick Hill Rise.
  - 4.2.2 Eastern boundary: The open land.
  - 4.2.3 Southern boundary: The gap in housing at Walkerwood Drive across Huddersfield Road and following Cedar Avenue to the canal.
  - 4.2.4 Western boundary: The canal.
- 4.3 With the exception of the southern boundary the PCT has agreed with this definition.
- 4.4 In 2007 the Appeals Unit held an oral hearing to consider an application in Carrbrook (to the north of the neighbourhood) ref: SHA/14330. The Panel found that Millbrook and Carrbrook were two separate neighbourhoods and in regards to the proposed northern boundary stated "*The Panel would accept the new private housing in Standrick Hill Road is certainly very different from the public housing in Tipperary Street. It is physically separated by a large metal fence and bollards in Crowswood Drive and a sward of green open space*".
- 4.5 The map supplied by the PCT clearly identifies the two communities covered by the PCT's neighbourhood definition as Millbrook and Copley. Assura's southern neighbourhood boundary follows the gap in housing that separates Millbrook in the north from Copley to the south which is supported by the fact that Copley High School and Copley Leisure Centre are found to the south of this boundary.
- 4.6 The PCT's proposed neighbourhood runs for a distance of approximately 2.5km along Huddersfield Road. It is submitted that a resident in the north of the PCT's neighbourhood (in Millbrook) would not consider themselves a neighbour of someone living in the south (in Copley).
- 4.7 The view that Millbrook and Copley are separate neighbourhoods is supported by the Appeals Panel's previous site visit which stated "*There is no apparent break in development between Carrbrook, Millbrook, Copley and Stalybridge although the taxi driver considered that local people would view them as separate areas*". As the Appeals Unit found that Carrbrook and Millbrook are separate neighbourhoods, it is submitted that the same should apply to Millbrook and Copley.
- 4.8 There is a significant incline on Huddersfield Road rising from 133m near the Co-op Pharmacy to 159m at the junction with Brushes Road. It is submitted that this hill is steep enough to form a barrier to movement and so a neighbourhood boundary. Although it is difficult to decide at what point the hill creates a boundary, it is submitted that Assura's southern boundary is a good indicator.
- 4.9 Assura's proposed neighbourhood contains a range of shops and services including, amongst others, a Post Office, off license, mini mart, take-aways, schools and leisure facilities. The majority of these are focused around the application site. The parade of shops that forms the application site also benefits from dedicated off street parking.
- 4.10 In addition to these typical neighbourhood facilities there is also a dental practice (408 Huddersfield Road) and two nursing homes with approximately 85 residents. Additionally there are known and firm plans for a new medical centre to open shortly within approximately 100m of the application site (further information is included under Neighbourhood Developments below).

- 4.11 With its range of shops and facilities the application site forms the focal point of the Millbrook neighbourhood. It is submitted that due to the significant distance and inclines a resident in the south of the PCT's neighbourhood would gravitate towards the shops in and around Copley and Stalybridge for their daily needs, rather than those in Millbrook.
- 4.12 The proposed Assura neighbourhood contained a resident population of approximately 3,500 based on the 2001 census. There have been considerable residential developments since this time and it is estimated that the resident population is well over 4,000 today.

#### Neighbourhood Developments

- 4.13 There are known and firm plans for a new medical centre to be completed near the application site, with medical services expected to commence in early 2010.
- 4.14 Planning permission was granted on 20 May 2009 and the building will be delivered under LIFT. Included is a copy of the Proposed Location Plan with the health centre marked in red (showing the location in relation to Grove Road and Huddersfield Road), plus layout plans for the surgery and a press release from Community Solutions (the LIFT company) regarding the Millbrook Health Centre.
- 4.15 The GP led health centre (being delivered via the Equitable Access scheme for the Mossley / Stalybridge area) will provide accommodation for a new 4 GP surgery, operating a full range of primary care services and also a walk in service for unregistered patients. The PCT predict the health centre will have 6,000 registered patients within 5 years.
- 4.16 The Equitable Access scheme targets the most under doctored areas, with the PCT's full business case for the development stating "*The Equitable Access business case presented to the Board in February described the progress made in extending GP coverage into those areas of greatest need (i.e.: the 'under-doctored' areas of Audenshaw/Denton, Droylsden and Mossley/Stalybridge)*".
- 4.17 The opening of the Millbrook Health Centre will dramatically increase the demand for pharmacy services in the neighbourhood and alter the way residents of the neighbourhood and surrounding area access medical and pharmaceutical services.
- 4.18 The remainder of the Grove Road development (outlined in blue on the location plan will provide an extra 119 dwelling ranging from 1 bed apartments to 4 bed houses.

#### Access to Pharmacies

- 4.19 There are no pharmacies in the Assura defined neighbourhood and one in the south of the PCT neighbourhood (Co-op Pharmacy at Lockside Medical Centre).
- 4.20 The Co-op Pharmacy is nearly 1 mile away by road, a journey which includes a steep incline along Huddersfield Road. Given the distance and steep inclines it is submitted that this is not a journey that would be undertaken by many and especially the typical pharmacy user.
- 4.21 When medical services commence at the new medical centre there will be a dramatic rise in the demand for pharmacy services in the neighbourhood. It is submitted that, regardless of whether the Co-op Pharmacy is in the neighbourhood or not, a return journey of nearly two miles is not acceptable for patients with prescriptions.
- 4.22 For those patients with a car the Co-op Pharmacy in the south of the PCT's neighbourhood has a small car park (which it shares with a medical centre), which was described as "chaotic" by the Appeals Panel in the previous site visit. The Panel also state that "*Stalybridge is a busy town in terms of traffic as it is where two major routes*

from the north merge and continue west to Manchester". It is submitted that even for those with a car accessing the existing pharmacies is not straight forward.

- 4.23 The PCT make reference to the bus service running along Huddersfield Road to Stalybridge. It is submitted that regardless of the frequency, patients will find having to catch a bus to access pharmacy services inconvenient and for many of the typical pharmacy users (the ill, infirm or mothers with prams) catching a bus is simply not a practicable option.
- 4.24 The courts have made it perfectly clear that convenience is a ground to consider. Beldam LJ observed in *ex parte E. Moss Ltd*, Transcript p. 22, that "convenience is not an irrelevant consideration", the relevant passage is quoted below;
- 4.24.1 *"To decide whether it is desirable to grant an application in order to secure adequate provision of services in a neighbourhood, the Authority has to compare the advantages with the disadvantages of doing so by using its judgment based on local knowledge and observation, present circumstances and future expectations. Convenience is not an irrelevant consideration."* (emphasis added).
- 4.25 The PCT also make reference to the local Ring & Ride service. This service must be booked at least the day before travel and the website states *"There may be times when we cannot accommodate your request, but we will offer you a different time whenever possible. The more flexible you can be with your journey, the more likely your journey can be arranged"*. This may be an excellent service for planned events, but for accessing a pharmacy to get an acute prescription dispensed this is not a suitable alternative to an easily accessible pharmacy that is within walking distance of the medical centre.
- 4.26 The fact that the new medical centre will offer a walk-in service for registered and unregistered patients suggests that the number of "unplanned" appointments (and so acute prescriptions) will be higher than normal.
- 4.27 It is submitted that a delivery service is not a substitute for face to face patient contact, especially for acute prescriptions.
- 4.28 The PCT's Mossley Stalybridge GP Practice Scheme Overview states that the medical centre will be open from 9am to 12pm on Saturdays. The nearest pharmacy (Co-op) is closed on Saturdays. This application has committed to open on Saturday mornings with contracted hours in place from 9am to 11.30am (and supplementary hours until 12pm) to cover this period.
- 4.29 If there is a need during the week Assura Pharmacy will happily extend its proposed opening times to reflect those of the new medical centre.
- 4.30 Regardless of neighbourhood definition there is no choice of pharmacy services or provider in the neighbourhood. Given the distance to the nearest pharmacy and the fact that a new medical centre is due to open soon it is submitted that considerable weight should be given to the criteria of choice in this application.

#### Service Provision

- 4.31 As indicated on the application form Assura Pharmacy will provide all the locally enhanced pharmacy services commissioned by the PCT. In addition to these services, where there is a need Assura Pharmacy provides the following services from their pharmacies:
- 4.31.1 Lipotrim Weight Management Programme; Gastroview 3 Indigestion test; Free Prescription Collection & Delivery Service; Blood Pressure Monitoring; Cholesterol Testing; Diabetes Testing; Pregnancy Testing.

- 4.32 All pharmacists employed will be qualified to provide Medicine Use Reviews (MUR's) and the premises fitted out in such a way to provide a private consultation room. Assura Pharmacy ensure they have more than adequate staffing and second pharmacist cover to enable the delivery of MUR's in a professional manner from dedicated consulting rooms. The pharmacy will also be fitted with the relevant IT connectivity to enable electronic transmission of prescriptions.

#### Conclusion

- 4.33 This application is both necessary and desirable to secure adequate pharmaceutical services in the neighbourhood for the following reasons:
- 4.33.1 A new 4 GP medical centre and walk-in centre will open in early 2010 in close proximity to the application site.
  - 4.33.2 The nearest pharmacy is located nearly 1 mile away down a steep incline.
  - 4.33.3 Regardless of neighbourhood definition there is no choice of pharmacy services or pharmacy provider.
  - 4.33.4 Assura are offering contracted hours on Saturday mornings, when the new medical centre will be open, but the nearest pharmacy is closed.
  - 4.33.5 The application site is in the centre of the Millbrook neighbourhood and contains a range of services and shops, including a dental surgery, Post Office, school and soon the Millbrook Health Centre.
  - 4.33.6 There have been recent housing developments within the Assura neighbourhood resulting in an increased resident population.
- 4.34 The granting of this application will remedy all the above issues and secure adequate pharmaceutical services in the neighbourhood.

#### 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 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 neighbourhood defined by the PCT. The Committee further noted that the Applicant disputes the southern boundary and seeks to define Millbrook as a neighbourhood in its own right, separate from the Copley area to the south. The Committee accepted that although the Millbrook and Copley areas on the map apparently merge into one another, discrete communities may exist. The Committee were of the view that no specific information had been provided to cause either the PCT or the applicant's suggested neighbourhood to be preferred over the other. The Committee was mindful that whether the neighbourhood was to be more or less

extensively defined, the Committee would need to take account of pharmacies outside the neighbourhood and the inclusion of the Co-operative Pharmacy to the south of the PCT neighbourhood would not alter the consideration of choice of provider.

- 5.7 The Committee noted the location of four existing pharmacies to the south in Stalybridge town centre, with the nearest pharmacy stated by the Applicant to be nearly 1 mile away. The Committee considered the amenities available nearby the proposed site in the Millbrook area, which do not currently include a GP surgery, and accepted the PCT's comment that residents would most likely be accustomed to travelling to the town centre to access a wider range of services. The Committee noted that there is a bus route along Huddersfield Road which provides 8 buses per hour towards the town centre.
- 5.8 The Committee concluded that the application was not necessary and therefore proceeded to consider whether, on the spectrum of adequacy, there was gap in provision sufficient to conclude that the application was desirable.
- 5.9 The Committee noted the Applicant's comments regarding the incline involved for those choosing to undertake the journey to the nearest pharmacies on foot. In the absence of any dispute on this point the Committee accepted that the incline may cause difficulties for less able residents given the distance involved.
- 5.10 The Committee noted the comments by the Applicant regarding the proposed new Millbrook Health Centre. The Committee noted in particular that the press release submitted by the Applicant indicates that the centre is likely to open in 2010 and will contain a GP practice. The Committee further noted that the PCT have not provided any information in this regard. Whilst the Committee accepted that the presence of a surgery without a pharmacy in close proximity does not of itself render services inadequate, the Committee were mindful that there will be a source of prescriptions in the relatively near future and for those residents who will be accessing the new centre convenience cannot be considered an irrelevant factor.
- 5.11 The Committee noted that the Applicant estimates the population of their proposed neighbourhood to be 4,000 based on the 2001 census figure of approximately 3,500 and recent residential developments. The Committee noted that this figure had not been disputed and concluded that the neighbourhood contains a not insignificant population.
- 5.12 The Committee noted that the Applicant intends to provide core opening hours on a Saturday, which are not currently provided by the existing pharmacy within the neighbourhood.
- 5.13 The Committee were mindful that whichever neighbourhood was to be accepted there is no choice of provider for the population within the neighbourhood, and gave weight to this factor in view of its findings above.
- 5.14 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, and given the proposed provision of medical services, then the Committee determined that pharmaceutical services were not currently secured to the extent that it was desirable to grant the application.

## 6 Decision

The Committee was of the view that the proposed pharmacy was expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee allows the appeal.

**Abby Richards**  
**Appeal Officer**

A copy of this decision is being sent to:

Assura Pharmacy Ltd  
Tameside and Glossop PCT