

11th February 2010

REF: SHA/15541

APPEAL AGAINST GREAT YARMOUTH AND WAVENEY PCT DECISION TO GRANT AN APPLICATION BY MR D BHATT FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT BUNGAY ROAD, HALESWORTH

1 The Application

By application dated 20th May 2009, Mr D Bhatt ("the Applicant") applied to Great Yarmouth and Waveney Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at Bungay Road, Halesworth. In support of the application it was stated:

Introduction

1.1 This is a formal submission in support of an Application for Inclusion in the Pharmaceutical List in respect of a new Pharmacy in Halesworth, Suffolk (preliminary consent) within the area of Great Yarmouth and Waveney PCT.

NHS Policy context

1.2 In April 2008, the Government published a White Paper, *Pharmacy in England*, which sets out practical, achievable ways in which pharmacists and their teams can contribute to improving patient care through delivering personalised pharmaceutical services and care in the coming years. The programme was developed to closely align with the Next Stage Review and *Our vision for primary and community care*. Whilst recognising that the role of pharmacy in ensuring the safe use of medicines will always remain an important one, emphasis is placed on the contribution to health improvement by pharmacy's involvement in activities such as smoking cessation, dietary advice and weight management. This vision sees pharmacies:

1.2.1 become 'healthy living centre' pharmacies with a greater emphasis on health and wellbeing, and supporting self-care

1.2.2 become the first port of call for people with minor ailments, with community pharmacies enabled to provide a wider range of medicines at NHS expense to people who would have otherwise visited a GP

1.2.3 provide support to patients with long term conditions, including supporting patients newly diagnosed and starting new courses of treatment

1.2.4 increase their professional involvement in screening, vaccination and sexual health services.

1.3 Detailed examples of the contribution that pharmacy can make to the current health challenges of maintaining a healthy weight and lifestyle, smoking, sexual health, alcohol use, the ageing population, long term conditions, mental health, healthcare associated infections, medication-related harm, drug misuse and health and work are included in a comprehensive annex to the White Paper.

Regulations and Guidance

1.4 This application relies on the information given by the Department of Health at: www.primarycarecontracting.nhs.uk/194.php

- 1.5 More specific references are cited within this text and further detail or clarification is available upon request.

Demographics and Health

- 1.6 The town of Halesworth is situated on the southern border of Waveney District. It is one of the district's four historic market towns, serving the surrounding villages such as Bramfield, Chediston, Wissett and Wenhaston, with a huge catchment area overlapping with that of the other market towns. It is
- 1.6.1 9 miles to Southwold (15km); 11 miles to Beccles (18km); 9 miles to Bungay (14km); 15 miles to Saxmundham (24km); 21 miles to Diss (34km)
- 1.7 The parish populations of Halesworth and adjacent Holton were estimated for 2005 at 4930 and 830 respectively (Waveney District Council 2007). This total of 5760 will have grown to over 6000 in the last four years. This does not include the hinterland of around 450 square miles described above.
- 1.8 The Health Atlas for Waveney shows that Halesworth generally scores in mid-range in terms of health. However –
- 1.8.1 With its high proportion of pensioners, 22% of the population report long term limiting illness: this is above the PCT district average of 20%, though below results for Southwold and Reydon, Beccles North and some Lowestoft wards.
- 1.8.2 Halesworth has relatively high standardised mortality rates - i.e. premature death rates per 100,000 population under 75 - are 6.8, just above Bungay, and following closely on some Lowestoft wards. Death rates for circulatory disease and cancer are among the higher third of wards.
- 1.9 Standardised Mortality Ratio - Suffolk Comparison 2001-2005
- 1.10 Number of People Living with a Disability or Limiting Long-term Illness (2001)

Primary Care Services

- 1.11 General medical services are provided in Halesworth by Dr Northover & partners at Cutlers Hill Surgery, Bungay Road (IP19 8SG) from modern premises and a list of XXXX patients.
- 1.12 This Bungay Road (former hospital) site also includes the Minor Injuries Unit, run by NHS Great Yarmouth and Waveney Community Services and the out-of hours GP medical service, run by TCN (Take Care Now) Ltd.
- 1.13 The pharmacy service in Halesworth relies solely on Boots (Alliance Healthcare) which is located in a traditional retail shop facing the market square (IP19 8AY), over 1kn (0.66 miles) away from the medical services, described above.

Existing Pharmacy Service

- 1.14 Boots in Halesworth provide a basic dispensing service (this is within essential services) and from their website, a medicines check up service, which may constitute an advanced MUR (medicines utilisation review) service under the NHS. However, the exact nature, quantum and quality of this service should be subject to further analysis in relation to the adequacy of pharmacy services, including patient satisfaction. It is also necessary to examine the existing facilities in relation to the space available to deliver NHS services i.e. dispensing and discrete consultation spaces or rooms to maintain patient confidentiality and ease of access.

- 1.15 Beyond this, there are no other NHS services provided by this pharmacy.
- 1.16 By inference and logic, the combination of limited accommodation, distant location with limited access are inadequate for the needs of the population to be served, without even considering the issues of services, capacity, capability, workforce and training.

Neighbourhood and Classification

- 1.17 The proposed neighbourhood is the built up area of Halesworth (map enclosed) and includes the area of Holton, adjacent to Halesworth. It is noteworthy that the railway line bisects the neighbourhood and presents a barrier to access between existing medical and pharmacy services.
- 1.18 It is also proposed that the neighbourhood is classified as urban (uncontrolled) as the town of Halesworth differs entirely from the rural hinterland, and bears all the characteristics of an urban town. Further argument for this can be readily provided, although in practical terms, this is a minor issue: the one mile radius of Boots already operates effectively to allow doctor dispensing in the rural area outside Halesworth. Formal classification of the town as urban would simplify consideration of this application.

Pharmaceutical Needs Assessment

- 1.19 The PCT website is silent upon the issue of PNA for Halesworth, although such an exercise will be required (and guidelines have recently been published) as part of the regulatory framework laid out in the Pharmacy White Paper 2008.
- 1.20 In the meantime, it is clear that there are numerous unmet needs, as only dispensing is offered by Boots in Halesworth, augmented by a basic MUIR advanced service.
- 1.21 The most striking need is for pharmacy to make a much bigger contribution to the management of long term conditions in the ageing population, as borne out by the demographics. The existing service is far short of adequate.
- 1.22 Lord Justice Laws in *R v FHS Appeal Authority ex parte Lowe* in 2001 set out certain tenets which Primary Care Trusts will find helpful in constructing their assessment. They link closely to the concept of "necessary or desirable" discussed below.
- 1.22.1 The grant of an application is only possible for the purpose of securing adequate provision of services in a neighbourhood;
- 1.22.2 The concept of adequacy is a question of degree. There is a spectrum or "sliding scale" of adequacy where conclusions are reached along a line between the extremes of adequacy and inadequacy. Logically therefore it is reasonable to find that such conclusions can vary over time. What may have been adequate 24 months ago may no longer be adequate now - or vice versa.
- 1.22.3 Therefore, whilst "adequacy" is the first question to be addressed, the true question is to determine the point, on the facts, at which an application lies on the sliding scale or spectrum of adequacy.
- 1.22.4 It may fall at the wholly adequate or inadequate point, be marginal or somewhere between the two. The Primary Care Trust may therefore conclude it is desirable to grant the application in order to secure adequate provision.

1.22.5 However, whilst there may be some slippage between what is marginal and the two extremes, the judgement to be made is an “emphatically pragmatic” one.

1.23 In summary, therefore, the concept of “adequacy” of service provision in a neighbourhood is for the Primary Care Trust to determine on the facts of the case. Such determinations may vary over time. A Primary Care Trust can start by asking whether provision is wholly adequate or inadequate. It can then proceed to consider whether it is desirable to grant an application to secure adequate provision.

Source: INFORMATION FOR PRIMARY CARE TRUSTS (CONTROL OF ENTRY) REVISED FEBRUARY 2007 GUIDANCE TO REGULATIONS - REVISED Feb 2007

1.24 The High Court (Sir Louis Blom-Cooper) held that:

1.24.1 *Whether a provision is adequate is an expression of a value judgement by those having to determine the adequacy. The decision-maker applying the phrase in Regulation 4(4,) may properly entertain doubts about the adequacy of any service provision. And tith decision-maker is a Committee, the members comprising the Committee decision can reach only a consensus of value judgements, ranging from the adequate to the inadequate, within a range of epithets along the continuum, from barely to seriously inadequate, or barely to entirely adequate. The lack of precision in the nounenon “adequate”, permits of a construction that imports a margin of appreciation in the application of a judgement about adequate provision. It is in this respect that the legislature intended to bring to bear the “necessity” or “desirability” concepts into relationship with “adequate provision”. Thus the decision-maker asks himself/herself or itself whether there is or is not adequate provision of the resources specified in the application. If the answer is “wholly inadequate” the conclusion will be the need to secure an adequate provision in the form of granting the application to supply them. If the answer is borderline - i.e. falls just one side or another of the line - then resort to “desirability” will be preferred to fill a possible, although not certain, gap in the service provision ... If there is any doubt in the mind of the decision-maker whether the current service provision is “adequate”, he may properly invoke the “desirability” test whereas “necessity” would not be apt to supplement a service provision that might marginally qualify for being “adequate”.*

Source: INFORMATION FOR PRIMARY CARE TRUSTS (CONTROL OF ENTRY) NHS (Pharmaceutical Services) Regulations 2005 - Annex C - Revised September 2005

Capacity, Capability and Need

1.25 It is well documented that in England, the number of prescription items dispensed has increased by 54% over die last 10 years (NHS Information Centre) and in many areas, well above this average figure (PCT data will show the figures for Halesworth) furthermore, there were 20 pharmacies per 100,000 population in England and in 2007-08, the mean number of prescription items dispensed per pharmacy was 5,931 per month.

1.26 This application proposes that there is above average growth of dispensing in Halesworth and responds to the need to meet this demand, by creating additional capacity and capability.

1.27 This would be particularly important at times of greater need as anticipated for the spread of swine flu. National and local planning indicates that enormous pressure would be exerted on existing services, let alone providing for the assessment and

treatment of whole populations with anti-viral drugs and symptomatic treatments within the NHS and by self-care in pharmacy.

Advanced Service: MUR Plus

- 1.28 One of the limitations of the current MUR service under national specification is that it lacks focus on unmet needs in specific therapeutic groups.
- 1.29 Under this application, the Applicant would seek to improve on this basic service, by collaboration with professional stakeholders, to introduce MUR Plus.
- 1.30 Examples and specifications of such services in respiratory disease (e.g. COPD and asthma) epilepsy and osteoporosis, have been developed in other parts of England. The Applicant proposes to take this learning and apply it to their service development programme, to improve both quality and capacity in the locality.

Enhanced services

- 1.31 The following text has been extracted from the regulations:
- 1.32 4.-(l) Each Primary Care Trust is authorised to arrange for the provision of the following additional pharmaceutical services to persons within or outside its area with pharmacists on its pharmaceutical list—
- 1.33 (a) An Anticoagulant Monitoring Service, the underlying purpose of which is for the Pharmacist to test the patient's blood clotting time, review the results and adjust (or recommend the adjustment to) the anticoagulant dose accordingly;
- 1.34 (b) A Care Home Service, the underlying purpose of which is for the pharmacist to provide advice and support to residents and staff in a care homes relating to— (i) The proper and effective ordering of drugs and appliances for the benefit of residents in the care home, (ii) The clinical and cost effective use of drugs, (iii) The proper and effective administration of drugs and appliances in the care home, (iv) The safe and appropriate storage and handling of drugs and appliances, and (v) The recording of drugs and appliances ordered, handled, administered, stored or disposed of;
- 1.35 (c) A Disease Specific Medicines Management Service, the underlying purpose of which is for the pharmacist to advise on, support and monitor the treatment of patients with specified conditions, and where appropriate to refer the patient to another health care professional;
- 1.36 (d) A Gluten Free Food Supply Service, the underlying purpose of which is for the pharmacist to supply gluten free foods to patients;
- 1.37 (e) A Home Delivery Service, the underlying purpose of which is for the pharmacist to deliver drugs and appliances to patients at their home;
- 1.38 (f) A Language Access Service, the underlying purpose of which is for the pharmacist to provide, either orally or in writing, advice and support to patients in a language understood by them relating to— (i) drugs which they are using, (ii) their health, and (iii) general health matters relevant to them, and where appropriate referral to another health care professional;
- 1.39 (g) Medication Review Service, the underlying purpose of which is for the pharmacist to (i) Conduct a review of the drugs used by a patient, including on the basis of information and test results included in the patient's care record with the objective of considering the continued appropriateness and effectiveness of the drugs for the patient, and (ii) Advise and support a patient regarding his use of drugs including

encouraging the active participation of the patient in advice and decision making relating to his use of drugs, and (iii) Where appropriate, refer the patient to another health care professional;

- 1.40 (h) A Medicines Assessment and Compliance Support Service, the underlying purpose of which is for the pharmacist to— (i) assess the knowledge of, compliance with and use of, drugs by vulnerable patients and patients with special needs, and (ii) offer advice, support and assistance to vulnerable patients and patients with special needs regarding the use of drugs with a view to improving the patient's knowledge of, compliance with and use of, such drugs; (i) A Minor Ailment Scheme, the underlying purpose of which is for the pharmacist to provide advice and support to eligible patients complaining of a minor ailment, and where appropriate to supply drugs to them for the treatment of the minor ailment;
- 1.41 (j) A Needle and Syringe Exchange Service, the underlying purpose of which is for a pharmacist to— (i) provide sterile needles, syringes and associated materials to drug addicts (ii) receive from drug addicts used needles, syringes and associated materials, and (iii) offer advice to drug addicts and where appropriate referral to another health care professional or a specialist drug treatment centre;
- 1.42 (k) an On Demand Availability of Specialist Drugs Service, the underlying purpose of which is for the pharmacist to ensure that patients or health care professionals have prompt access to specialist drugs;
- 1.43 (l) Out of Hours Services, the underlying purpose of which is for the pharmacist to dispense drugs and appliances in the out of hours period (whether or not for the whole of the out of hours period);
- 1.44 (m) A Patient Group Direction Service, the underlying purpose of which is for the pharmacist to supply a prescription only medicine to a patient under a Patient Group Direction;
- 1.45 (n) A Prescriber Support Service, the underlying purpose of which the pharmacist to support health care professionals who prescribe drugs, and in particular to offer advice on— (i) the clinical and cost effective use of drugs, (ii) prescribing policies and guidelines, and (iii) repeat prescribing;
- 1.46 (o) a Schools Service, the underlying purpose of which is for the pharmacist to provide advice and support to children and staff in schools relating to— (i) the clinical and cost effective use of drugs in the school, (ii) the proper and effective administration and use of drugs and appliances in the school, (iii) the safe and appropriate storage and handling of drugs and appliances, and (iv) the recording of drugs and appliances ordered, handled, administered, stored or disposed of;
- 1.47 (p) A Screening Service, the underlying purpose of which is for the pharmacist to— (i) identify patients at risk of developing a specified disease or condition, (ii) Offer advice regarding testing for a specified disease or condition, (iii) Carry out such a test with the patient's consent, and (iv) Offer advice following a test and referral to another health care professional where appropriate;
- 1.48 (q) A Stop Smoking Service, the underlying purpose of which for the pharmacist to— (i) Advice and support patients wishing to give up smoking, and (ii) Where appropriate, to supply appropriate drugs and aids;
- 1.49 (r) A Supervised Administration Service, the underlying purpose of which is for the Pharmacist to supervise the administration of prescribed medicines in the pharmacy; and

- 1.50 (s) A Supplementary Prescribing Service, the underlying purpose of which is for the Pharmacist who is a supplementary prescriber to implement with an independent Prescriber a clinical management plan for a patient with that patient's agreement.

World Class Commissioning

- 1.51 In order to accelerate their programme of service development starting with this application, the Applicant would propose a dialogue with the PCT based upon the guidance issued by the Department of Health on 31st March 2009, entitled: World class commissioning: Improving Pharmaceutical Services (a practical guide to support PCTs in commissioning pharmaceutical services).
- 1.52 In order for this application to address the issue of a simple "wish list" of services, it is proposed that a multidisciplinary stakeholder group will be formed, to include the Applicant's pharmacy together with other providers in primary care, the PCT and patient/public involvement, to agree, plan and implement the development of new services, which can also be properly integrated with existing services.

The new criteria of 'choice' promoting competition

- 1.53 *The Applicant quotes an extract taken from the guidance for PCTs.*
- 1.54 It is clear that this application satisfies the above criteria, having demonstrated need, but also intent, planning and a proposed method for implementation.

Summary

- 1.55 This application makes a compelling case for a new pharmacy in Halesworth. The route via preliminary consent has been used to facilitate negotiations for a suitable site near the providers of medical services at Bungay Road. The Applicant would seek to make further representations in relation to this application, as this process continues and enables the disclosure of more site-specific issues.
- 1.56 The data and arguments presented herewith support the need for this pharmacy based on numerous overlapping criteria, which make this application both necessary and desirable:
- 1.56.1 The lack of adequate service provision existing in Halesworth.
 - 1.56.2 Access.
 - 1.56.3 Capacity and Capability.
 - 1.56.4 Choice and diversity.
 - 1.56.5 Innovation.
 - 1.56.6 Demographics.
 - 1.56.7 Planned provision of new services.
 - 1.56.8 Stakeholder involvement.
 - 1.56.9 Flawless track record of providing pharmaceutical services in Suffolk for over 23 years and professional engagement at every level.
 - 1.56.10 Alignment with NHS policy, responding to existing needs and improving services.

The Committee noted that:

- 2.5.1 The existing pharmacy was situated in the town centre and was open 6 days a week.
 - 2.5.2 There had been no complaints locally about the lack of pharmaceutical services and this was borne out by comments from those consulted.
 - 2.5.3 Concerns were expressed by the local GP Practice that they would potentially lose 20% of their dispensing patients.
 - 2.5.4 Some consultees suggested that the PCT should wait until it had completed its Pharmaceutical Needs Assessment, but the Head of Primary Care contracting at the PCT said that this would not be available until March 2011 and the Committee considered this to be an unacceptable delay.
 - 2.5.5 Whilst the proposed new pharmacy was not in the town centre, it was very near to the local GP surgery (Cutlers Hill) and Community Hospital and therefore would be convenient for patients visiting the surgery.
 - 2.5.6 The applicant proposed to offer extra services which the PCT commissions from local pharmacies as Enhanced Services:
 - 2.5.6.1 Chlamydia screening and treatment
 - 2.5.6.2 Smoking Cessation
 - 2.5.6.3 Emergency Hormonal contraception
 - 2.5.6.4 Medicines Management in Care Homes
 - 2.5.7 The existing pharmacy in Halesworth has declined to provide these services. In the view of the Committee the proposed pharmacy would offer patients more choice and enable the PCT to meet its challenging national targets especially relating to Chlamydia screening/treatment and smoking cessation.
 - 2.5.8 The long term loss of pharmaceutical services to the population of Halesworth due to the lack of viability of the current provider was considered. However, as this provider had one of the highest rates of dispensing in the PCT area both in terms of items dispensed and cost of items, it was not considered to be a likely scenario, particularly as there was no evidence within that pharmacy's representations that this would be the case.
- 2.6 Decision
- 2.6.1 For the reasons set out above the Committee concluded that it was expedient to grant approval under regulation 12.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 2nd December 2009, Boots UK Ltd appealed against the PCT's decision. The grounds of appeal are:

- 3.1 Boots disagree with the PCT decision to approve the application and their reasoning.
- 3.2 As the PCT state in their consideration, there have been no complaints locally about any lack of pharmaceutical services. There has been a change in circumstances since

Boots' letter dated 11 August 2009, in that Boots now have two permanent pharmacists at the store. Both pharmacists will attend the next PCT Smoking Cessation course (date yet to be confirmed), and will also attend any other PCT courses to enable them to provide any additional services that the PCT wish to commission.

- 3.3 Boots would like to confirm that the Boots pharmacy in Halesworth is open from 0830 to 1830 Monday to Friday and from 0830 to 1730 on Saturday, with no lunchtime closing. Boots would also confirm that the following pharmaceutical services are provided: Supervised Methadone, Needle Exchange, Medisure and Domiciliary Compliance Aids, Care of Medicines training for Care Homes, Blood Pressure Testing, MUR's, a managed repeat prescription collection service and a delivery service. The pharmacy is also one of the nominated distribution centres for the provision of Tamiflu in response to any outbreak of H1N1 flu in the locality.
- 3.4 The existing pharmacy is reasonably accessible from all parts of the neighbourhood whether or not patients choose to call at a surgery en-route. The distance to the GP surgery from the pharmacy, which is located in the town centre where residents work and shop as part of their everyday lives, is not excessive at approximately one kilometre.
- 3.5 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Litigation Authority to uphold this appeal accordingly.

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 CHARLES RUSSELL LLP, ON BEHALF OF THE APPLICANT

- 4.1.1 There is one pharmacy in Halesworth, owned by Boots, the appellant. The nearest other pharmacies are not in the neighbourhood and accessing them would involve a round trip of up to 20 miles.
- 4.1.2 As the Appeal Unit knows, when deciding whether it is necessary or expedient to grant the application in order to secure the adequate provision of pharmaceutical services, the PCT was required to have particular regard to whether people had in the neighbourhood a reasonable choice of providers and of services. Currently, there is only one pharmacy in the neighbourhood and, therefore, there is no choice of services or providers.
- 4.1.3 The Applicant recognises that the absence of choice does not mean that the application must be granted; there is no requirement for every neighbourhood to have more than one pharmacy. From the decision, it is clear that the PCT did not fall into error. The PCT noted that my client proposes to offer the following enhanced services:
- 4.1.3.1 Chlamydia screening and treatment
- 4.1.3.2 Smoking cessation
- 4.1.3.3 Emergency Hormonal contraception
- 4.1.3.4 Medicines Management in Care Homes

- 4.1.4 The PCT recorded that Boots had declined to provide these services. In these circumstances, the PCT was entirely justified in deciding that it was expedient to grant the application to secure adequate provision of those services. Charles Russell would respectfully go further and suggest this is a relatively rare case in which it is necessary to do so, having regard to the refusal of the existing pharmacy to provide services the PCT commissions and for which it has identified a need.
- 4.1.5 Boots say there have been no complaints about their services, though conspicuously omit to produce patient satisfaction survey. More to the point, the gaps in service provision relate not so much to services that Boots provide, but to services Boots do not provide. Charles Russell note from Boots' appeal that Mrs Lockton says Boots will arrange to provide smoking cessation services. She does not mention Chlamydia screening, EHC or Medicines Management in Care Homes. There is a vague reference to other services, but no assurance that the enhanced services the Applicant offers and which the PCT wants to be available to local people will be provided. Granting the application will secure the provision of those services.
- 4.1.6 It is precisely because a sole service provider may choose not to offer a full range of services that choice was introduced as an express criterion in the 2005 Regulations, to give PCTs the opportunity to grant applications to ensure patients do not lack services that are available elsewhere. It would defeat the purpose of the change made in 2005 if an existing sole provider of services could refuse to provide certain services, wait to see if an application made in June 2009 is granted, and then avoid the consequences of the PCT's decision by making vague references to the provision of additional services at an unspecified future date.
- 4.1.7 For completeness, Charles Russell should mention that the Applicant provided detailed information to the PCT about local health needs. Amongst other things, there is a high proportion of pensioners, and a high proportion of local people with long-term limiting illness. These (probably overlapping) sections of the population would plainly benefit from the ability of pharmacies to carry out a Medicines Use Review. Pharmacies are able to provide up to 400 MUR a year (an average of 33 per month). In the last 3 months for which official statistics are available, Boots in Bungay carried out 23 MURs in August 2009, 8 in September 2009, and 4 in October 2009. Even if Boots were ensuring that local people received this needed service by carrying out 400 MURs a year, they will then have reached the limit of what they could achieve, whereas the Applicant could reach an additional 400 people.
- 4.1.8 The Applicant's proposed pharmacy would be situated close to the Bungay Road GP practice and, as the PCT noted, patients of the practice would benefit from improved access to a pharmacy when they have seen a GP. This would be of particular assistance to people who do not live in Halesworth, where the Boots pharmacy is located, more than 1km away, but who come into the neighbourhood from outlying villages and settlements and would have no need after seeing a GP to travel the extra distance into Halesworth as they currently do.
- 4.1.9 For all these reasons, the Applicant asks the Pharmacy Appeals Committee to uphold the PCT decision and to dismiss the appeal because it is at least expedient to grant the application in order to secure in the neighbourhood the adequate provision of pharmaceutical services.

4.2 HALESWORTH TOWN COUNCIL

- 4.2.1 Cutlers Hill Surgery have a very well thought through plan and are working with patient groups and Boots to ensure the best service for our residents. Another pharmacy could disrupt these plans and create future problems.
- 4.2.2 As stated in their letter of 19th August 2009 Halesworth Town Council wholeheartedly support Cutlers Hill Surgery and are still concerned that services developed in a fragmented fashion would not be in the best interests of health services locally. It is vital that the viability of existing provision should not be jeopardised.
- 4.2.3 Halesworth Town Council request to be consulted in any plans affecting its community.

4.3 ANGLIA SUPPORT PARTNERSHIP ON BEHALF OF THE PCT

- 4.3.1 The reasons for the PCT's approval contained in paragraphs 5.6 and 5.7 of the decision letter dated 6/11/09 are particularly pertinent in the context of this appeal.
- 4.3.2 The PCT had identified a need for the enhanced services described in paragraph 5.6, i.e.:
 - 4.3.2.1 Chlamydia screening and treatment
 - 4.3.2.2 Smoking Cessation
 - 4.3.2.3 Emergency Hormonal contraception
 - 4.3.2.4 Medicines Management in Care Homes

and had invited Boots (UK) Ltd to provide these services. They had declined to do so and their apparent willingness to do so now is, the PCT would suggest, a reaction to the approval designed to protect their monopoly provider position.
- 4.3.3 The PCT believes that a second pharmacy in the town will increase choice, both in terms of service availability and provider, without any significant adverse effect on overall service provision and consequently stands by its decision.

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 the PCT neighbourhood as defined on a map which had been circulated to the parties. The Committee further noted that there was no dispute on this matter. The Committee considered that the PCT neighbourhood comprising the built up area of Halesworth and Holton was based on appropriate features and was therefore content to accept that definition for the purposes of this application.
- 5.7 The Committee noted that there is currently one pharmacy, operated by the appellant, located in Halesworth town centre approximately 1 km from the proposed site. The Committee further noted that the next nearest pharmacies are approximately 7.5 miles away according to the PCT. The Committee were mindful that distance to the nearest pharmacy does not of itself create an inadequacy and noted that there was no information provided to suggest that residents are experiencing any difficulties in accessing Boots in the town centre. The Committee accepted however that the application offers a geographical advantage for those in the north of the neighbourhood and also for patients of the GP surgery nearby the proposed site.
- 5.8 The Committee noted that the applicant was proposing to provide certain enhanced services which the PCT commissions and are not currently provided by the appellant's pharmacy, albeit Boots state on appeal that their pharmacists will be attending the next Smoking Cessation course. Given that the PCT confirm that Boots have previously declined to provide the services in question, the Committee was of the view that the applicant offered an advantage in this respect.
- 5.9 In the Committee's view the figures quoted by the applicant point to a significant population. The Committee also noted that there would be a visiting population from surrounding villages in order to access the GP surgery and other amenities.
- 5.10 The Committee noted that there is no choice of either provider or services for the reliant population. Whilst the Committee accepted that it is not axiomatic that there must be choice in every neighbourhood, having had regard to the factors at 5.9 and 5.10 the Committee concluded that weight should be given to this factor.
- 5.11 On balance, taking into account the services available together with the lack of choice, the Committee was of the view that there was a gap in provision that was sufficient upon which to conclude that services were not currently secured to the standard of adequacy.

6 Decision

The Committee was of the view that the proposed pharmacy was expedient to secure the adequate provision of services. Accordingly, the Committee dismisses the appeal.

Abby Richards
Appeal Officer

Private and confidential information has been replaced by XXXX

A copy of this decision is being sent to:

Charles Russell LLP, on behalf of Mr Bhatt
Boots UK Ltd
Anglia Support Partnership, on behalf of the PCT
Halesworth Town Council