

2nd February 2010

REF: SHA/15530

APPEAL AGAINST SOUTHWARK PCT DECISION TO REFUSE AN APPLICATION BY LLOYDS PHARMACY LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF LAND AT DOWNTOWN ROAD AND SALTER ROAD, ROTHERHITHE, LONDON SE16 6NP

1 The Application

By application dated 15th June 2009, Lloyds Pharmacy Ltd ("the Applicant") applied to Southwark Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of land at Downtown Road and Salter Road, Rotherhithe, London SE16 6NP. In support of the application it was stated:

- 1.1 The applicant believes this application is at the very least desirable to secure to the population the adequate provision of pharmaceutical services in the neighbourhood.
- 1.2 For the purpose of this application the applicant would submit that the neighbourhood is that as highlighted blue on the attached map and is essentially that of the River Thames to the north, Lower Road to the south and Surrey Quays Road and Needleman Road across to the river to the west and the Thames and dock to the east.
- 1.3 The proposed site is shortly to undergo redevelopment which will include that of the health centre. There will be additional affordable housing. The nearest pharmacy is almost three quarters of a mile away and is not readily accessible by foot. The route involves a lengthy journey along Redriff Road to a retail park.
- 1.4 Not everyone on the neighbourhood will have access to a car and therefore the applicant does not believe the existing pharmacies are adequately accessible and do not provide a reasonable choice to patients and residents.
- 1.5 For the above reasons the applicant submits that this application is desirable to secure in the neighbourhood adequate provision of pharmaceutical services and to provide a reasonable choice of services to patients and residents.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 29th October 2009 states:

NEIGHBOURHOOD

- 2.1 The Panel noted the applicant's description of the neighbourhood and felt that the eastern and western boundaries needed extending in order to include those people/communities neighbouring other PCTs (Lewisham). Other suggested neighbourhood by those who sent in representations were also noted.
- 2.2 The Panel considered that the relevant neighbourhood was defined by the following boundaries:
 - 2.2.1 To the north: The River Thames running across to the west
 - 2.2.2 To the south: Lower Road
 - 2.2.3 To the east: Plough Way

2.2.4 To the west: The River Thames

Adequacy

- 2.3 The Panel noted that there are 4 pharmacies within the defined neighbourhood, 2 of which are independent contractors and the other two are large multiple chain. They took into consideration essential and directed services provided by the 4 pharmacies within and outside the neighbourhood. Southwark's PNA has already determined that the current pharmaceutical services are adequate for its population.
- 2.4 The Panel conclude that there is adequate provision of pharmaceutical services within the neighbourhood.

Choice and access

- 2.5 The Panel noted comments received during consultation, most of which were from the contractors and took into consideration those deemed relevant to consumer choice and access. The Panel was satisfied that current contractors are providing a good service and varied pharmaceutical services thereby promoting choice. The PCT has received no complaints of lack of choice or access to pharmaceutical services from patients or any local groups. No representations were received from locals groups or patient forums during consultation period, the Panel assumes that, patient are satisfied with the current pharmaceutical provision and access.
- 2.6 The area is well served with a number of bus routes to Surrey Quays, a fairly busy shopping mall, where 2 of the pharmacies are located.
- 2.7 Although the proposed site is within an area that is due to undergo re-development, the Panel was satisfied that, the 4 pharmacies within and those outside the neighbourhood are already willing to provide additional services would the need arise and as commissioned by the PCT thereby meeting any future demand. The Panel believes that redevelopment at Surrey Quays will not generate a substantial population growth or increase local businesses in the area.

Opening Hours

- 2.8 The Panel noted the proposed opening hours which does not offer any extended hours, whilst 3 of the pharmacies within and some outside the neighbourhood have extended opening hours. Two of the large multiple chain at Surrey Quays are open from 9.00am and as late as 20.00pm Monday to Saturday and from 11.00am - 17.00pm on Sundays.

Necessary or Expedient

- 2.9 The Panel is satisfied that current contractors provide varied essential, directed and local enhanced services such as smoking cessation, supervised consumption, EHC, Needle and many others. There is currently 3 Local Pharmaceutical Service and 2 Essential Small Pharmaceutical Service pharmacies within the PCT area providing pharmaceutical services to all patients within Southwark.
- 2.10 The Panel noted the fact that the applicant proposed to provide all essential and enhanced services but concluded that most of the services are readily available and as already mentioned above, most of the PCT's contractors are willing to provide additional services should the need arise.

Decision

- 2.11 The Panel was satisfied that there is adequate provision of pharmaceutical services within the neighbourhood. The Panel therefore determined that the application does not meet the necessary and expedient test and the application is therefore refused.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 19th November 2009, the applicant appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 The applicant believes this application is at the very least desirable to secure to the population the adequate provision of pharmaceutical services in the neighbourhood.
- 3.2 The applicant disagrees with the PCT in terms of their definition of the neighbourhood. The applicant does not agree with the PCT that the area around Albion Street, Rotherhithe Street, and Swan Road is part of the same neighbourhood as they are separated by cul-de-sac streets. This community also accommodates the Albion Street Group Practice. The applicant also does not consider Carefield Limited to be within the same neighbourhood as it is situated to the south side of the Dock and also to the south side of Lower Road.
- 3.3 Whatever the definition of neighbourhood however, there are no pharmacies adequately accessible particularly for the population residing in the northern and eastern end of the peninsular.
- 3.4 The proposed site lies within the super output area 008B in the Surrey Docks Ward. Carefield Limited lies within the Rotherhithe Ward as does the pharmacy Campion and Co Chemist on Albion Street.
- 3.5 Access to the two nearest pharmacies involves a journey to a retail park. The applicant submits these pharmacies are not readily accessible by foot. The retail park is a destination site that is primarily accessed by car. Given the distance involved it is not a wholly adequate journey for a patient to undertake by foot from the vicinity of the Health Centre / proposed site. The Surrey Docks Ward has a significant proportion of households without a car; indeed 39.5% of households do not have a car or van. This compares to 37.5% for London and 26% for England. Given that the nearest pharmacy from the proposed site is over three quarters of a mile away and that there are a significant proportion of households without use of a car the applicant does not consider there to be wholly adequate access to pharmaceutical services.
- 3.6 The proposed site is situated within a dense residential area. The Surrey Docks ward alone has a population of 11,356 in 2001. The proposed site is shortly to undergo redevelopment which will include that of the health centre. There will be also be additional affordable housing.
- 3.7 For the above reasons the applicant submits that this application is at the very least desirable to secure in the neighbourhood adequate provision of pharmaceutical services in the neighbourhood.
- 3.8 The applicant therefore respectfully asks the FHS Appeal Unit to reconsider the application and uphold this appeal.

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 **CAREFIELD LTD**

- 4.1.1 As stated in their correspondence via their solicitor Charles Russell dated 07 August 2009, Carefield Ltd continue to oppose this planning application. Their reasons for this have already been stated in their initial representation letter and Carefield Ltd do not believe the appeal letter from Lloyds Pharmacy Ltd has added any weight for reconsideration of the decision. Specifically in answer to the points they have raised in their appeal:

- 4.1.2 Disagreement with the PCT in terms of their definition of the neighbourhood on the grounds that cul de sac streets separate Albion Street, Rotherhithe Street and Swan Road and that Carefield Ltd is situated to the south side of the Dock is in Carefield Ltd's opinion a weak argument. As is the fact that the area is separated into different political wards.
- 4.1.3 Lloyds continue to base their accessibility argument on whether households have cars or not without acknowledging the efficient bus routes C10 and 381, which regularly pass along Salter Road and Redriff Road to Surrey Quays shopping centre. That is in addition to the fact that the shopping centre is only approximately a ten minute walk from the proposed new pharmacy site.
- 4.1.4 Carefield Ltd continue to maintain that even with the redevelopment of the health centre and any additional housing, the area is sufficiently provided for by a good choice of pharmacies within an easy distance for all residents of the neighbourhood. On that basis Carefield Ltd object to the appeal.

4.2 LAMBETH SOUTHWARK AND LEWISHAM LPC

- 4.2.1 The LPC support the PCTs neighbourhood definition as outlined in their decision letter dated 29th October 2009.
- 4.2.2 The appellant's contention that Surrey Docks residents have marginally lower car ownership than the London average does not take into account the nature of the housing stock and demography of the area surrounding the proposed site. The current housing stock surrounding the proposed site is mainly comprised of houses with garages/drives, supplemented by ample allotted parking and street parking for overspill. The proposed Barratt's housing development will also include 135 car parking spaces. Indeed the streets surrounding the applicant's proposed site are littered with cars. This would lead the LPC to believe, supported by demographic data, that the area is relatively affluent with a high level of car ownership. This is further illustrated by the Index of Multiple Deprivation 2007 for Docks which demonstrates that Surrey Docks residents are among the least health, income and employment deprived in Southwark.
- 4.2.3 The pavements from Surrey Docks Health Centre to the existing pharmacies are wide, well lit and well maintained in order to facilitate pedestrian travel to the existing pharmacies.
- 4.2.4 Access to the existing pharmacies is well-served with frequent bus services to Surrey Quays Shopping Centre and Canada Water Station.
- 4.2.5 The applicant, who has the burden of proof, has not provided any material evidence to support any purported inadequacy in pharmaceutical services in the area. The existing community pharmacy infrastructure has plenty of capacity to meet the current and future demands of the population.
- 4.2.6 Prescription collection & delivery services are offered and well established by local pharmacies.
- 4.2.7 The proposed Barratt Homes development does not have any planning permission; indeed the Southwark planning office will not hear the plans until February 2010.
- 4.2.8 The existing pharmacies provide excellent services over extended hours virtually 365 days a year:
 - 4.2.8.1 Tesco's Pharmacy, Surrey Quays Shopping Centre - 8am to 8pm Mon to Sat, 11am to 5pm Sun.

4.2.8.2 Boots the Chemist, Surrey Quays Shopping Centre - 9am to 6pm Mon to Wed & Fri to Sat, 9am to 8pm Thurs & 11am to 5pm Sun.

4.2.8.3 Surdock Chemist - 9am to 7pm Mon to Fri 9am to 6.30pm Sat.

- 4.2.9 Southwark PCTs Pharmaceutical Needs Assessment does not state that there is any inadequacy in pharmaceutical services in the area of the proposed pharmacy
- 4.2.10 In addition the existing pharmacies would further extend their opening hours should the PCT commission them to.
- 4.2.11 Although it may be desirable to have a pharmacy in close proximity to the surgery, there is no precedent in the Regulations or Judicial Judgements that it is desirable to have a pharmacy in close proximity to a medical centre. The concept of necessity is based on adequacy in the neighbourhood.
- 4.2.12 In considering this application the LPC asks the panel to be mindful of R v Humberside FPC ex parte Dr. Moore and Crump when in the High Court Mr. Justice Potts held that in considering adequacy account is not to be taken just of pharmacies within the neighbourhood but of all the pharmacies in that Health Authorities area. In this matter the LPC ask the panel not to consider just the provision of services from pharmacies within the neighbourhood, howsoever it be defined, but to take account of the large number of providers in the surrounding area that can provide adequacy for those in the neighbourhood who are dependent on pharmaceutical services.
- 4.2.13 Given the above the current provision of pharmaceutical services in the PCT defined neighbourhood, whether supplied from within or without, is adequate and the applicant, who has the burden of proof, has not shown it to be otherwise. The application does not pass the necessary or expedient test in looking at the concept of necessary or desirable the LPC consider that it is concerned with adequacy and not improvement. In this matter there is adequacy and the applicant has not shown evidence to the contrary.
- 4.2.14 For all the reasons outlined above the committee respectfully requests that the Appeal panel reject this appeal.

4.3 LLOYDS PHARMACY LTD

Neighbourhood:

- 4.3.1 Running southwards through the neighbourhood is the open space of the Ecological Park and Russia Dock Woodland. These can be seen in the photographs in Appendix 1 on page 10. In Lloyds opinion the pathways through this area do not provide adequate access to the existing pharmacies at the southern tip of the neighbourhood at the Surrey Quays Shopping Centre. In winter the paths are quiet and secluded with trees and shrub. This would not be inviting in the winter months or in periods of inclement weather. Lloyds would submit therefore the most practical route would need to be via the main roads however, it is a considerable walk to get to the Surrey Quays Shopping Centre, and not a desirable journey. The Surrey Quays Shopping Centre is extremely busy and the car park congested and access by foot would not be easy. Prior reaching the Surrey Quays Shopping Centre there is an Entertainment Park and also a Business Park which will have a significant volume of commercial traffic. The photographs on page 8 of Appendix 1 show the congested car park at Surrey Quays Shopping Centre. Accessing the pharmacy on Lower Road would entail crossing a very busy road, the A200. This road has parking restrictions along its length. Lower Road is also one way at the point of reaching Shurrock Chemist. The locality of Shurrock Chemist has very much a different feel than to the area around the proposed site on the peninsular. This can be seen on page 7 of Appendix 1.

- 4.3.2 Shurrock Chemist is on the south side of Lower Road and is therefore, in Lloyds' opinion not within even the PCT's definition of the neighbourhood.
- 4.3.3 Lloyds do not believe that pharmacy on Albion Street is readily accessible for the population living on the east side or north side of the peninsular. A patient would not likely cut across the park area and there is limited direct access east to west. Access would need to involve traversing around the periphery of the peninsular. Campion & Co Chemist on Albion Street is in a much older more deprived part of the neighbourhood this can be seen on page 6 of Appendix 1.

Necessary or Expedient (desirable):

- 4.3.4 The photographs on page 1 of Appendix 1 highlight the location and proposed development of the new surgery, proposed additional housing and also the residential area adjacent to the Surrey Docks Health Centre. There is the Redriff Primary School to the rear of the health centre and there is a new Surestart Contact and Day Centre that has just been constructed adjacent to the site. These can be seen on pages 2, 3, 4, 5 of Appendix 1. There is therefore a significant reliant population in the vicinity of the proposed site as well as visitors who will require access to pharmaceutical services.
- 4.3.5 Appendix 2 evidences the details of the proposed new development including the new Health Centre and Community Centre.
- 4.3.6 The new Health Centre is proposed to be 79% larger than the existing health centre and will therefore have an increased capacity and able to provide a greater range of services.
- 4.3.7 The PCT state that their PNA suggests that there is adequate provision of pharmaceutical services. The PNA actually states on page one that there is not a need for more pharmacies in Southwark. These are two different statements. Southwark covers a large area. Lloyds do not believe the adequacy of access and provision of pharmaceutical services in the neighbourhood has been fully considered. The PNA was last produced in April 2005, some 5 years ago. Lloyds would submit therefore that this is now somewhat out of date.
- 4.3.8 Lloyds would submit that the existing provision of pharmaceutical services cannot be considered wholly adequate. There is in particular not wholly adequate access to pharmaceutical services due to the distance, the difficulty of access to existing pharmacies, the terrain, the level and demographics of the population and taking into account the development of the area.
- 4.3.9 For the above reasons Lloyds submit that this application is at the very least desirable to secure in the neighbourhood adequate provision of pharmaceutical services therefore Lloyds respectfully ask the FHS Appeal Unit to uphold this appeal.

4.4 SOUTHWARK PCT

4.4.1 The application

4.4.1.1 The application made by Lloyds Pharmacy was considered under Regulation 12 of the National Health Service (Pharmaceutical Services) Regulations 2005. The process and matters taken into account by the PCT are laid out in their decision letter, minutes and the report that the PCT have already forwarded to the Appeal Unit.

- 4.4.2 In response to Lloyds Pharmacy's appeal the PCT would like to make the following points:

- 4.4.3 Southwark PCT Pharmaceutical Needs Assessment (drafted in 2005 and is currently being updated) identifies that there is currently no need for more pharmacies in Southwark.
- 4.4.4 There is good provision by existing pharmacies for all enhanced services commissioned by the PCT.
- 4.4.5 The population of the 'peninsula' is well served by 4 pharmacies that provide all the pharmaceutical and enhanced services commissioned by the PCT.
- 4.4.6 According to the Office of the National Statistics Surrey Docks ward had 5,269 households, with a total of 4,049 households owning cars or van. The area is also well served by bus routes.
- 4.4.7 Surrey Quays shopping centre is the main retail facility in the 'peninsula'. It is served by a tube station and bus terminus at Canada Water. The local population use social amenities (e.g. cinema) and shops as part of their daily activities/living and therefore can easily access pharmaceutical services provided by the 2 pharmacies (Boots and Tesco).
- 4.4.8 For clarity, the Panel defined the neighbourhood using natural boundaries e.g. River Thames and major roads.
- 4.4.9 The PCT also confirm that they are content for this matter to be dealt with on the papers.

5 Further comments

5.1 LLOYDS PHARMACY LTD

- 5.1.1 The PCt refer to car ownership levels. For the Surrey Docks Ward within which the proposed site is situated households without a car is 39.5 per cent this is higher than that for London and also England. Of the 5,267 households some 2,079 therefore, do not have a car or van (see table overleaf labelled Statistics Surrey Docks Ward). Within the Super Output Area 008B which represents a smaller area around the proposed site there are 37.9 per cent of households without a car or van (see table overleaf labelled Statistics Surrey Docks Super Output Area). There are therefore a significant number of people who need to walk or rely on public transport. The applicant has previously highlighted the difficulties that people would face in getting to a pharmacy.
- 5.1.2 The statistics also highlight the high population within the Surrey Docks Ward and also that there is a considerable population in the immediate vicinity of the Health Centre and proposed site on Downtown Road.
- 5.1.3 The applicant would also ask that an Oral Hearing be held as part of the consideration to which they would be willing to attend.

6 Consideration

- 6.1 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.
- 6.2 It also had before it the responses to the Authority's own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

- 6.4 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”).
- 6.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 6.6 The Committee noted the PCT’s defined neighbourhood at paragraph 2.2. The Committee had regard to the applicant’s comments that the PCT, in reaching its definition, had failed to take into account various geographic and physical factors. The Committee noted that in response, the PCT states that they had defined the neighbourhood using natural boundaries. The Committee considered the applicant’s reasons for their definition, however were of the view that there was no specific information 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 Champion & Co. Pharmacy would not alter the choice of provider in the neighbourhood. On this occasion, and without prejudice to future consideration, the Committee adopted the applicant’s more restrictive definition of neighbourhood.
- 6.7 The Committee noted that according to the applicant the nearest pharmacy at Surrey Quays shopping centre is almost three quarters of a mile away with difficulties due to the pharmacy being located in a retail park primarily access by car. The Committee further noted the applicant’s comments regarding the routes available for those to the north and east. However the Committee also had regard to comments from the LPC that pavements along the main road are wide and well lit and from Carefield Ltd who comment that it is approximately a 10 minute walk. For those without access to private transport, the Committee noted comments that there are frequent buses through the neighbourhood which stop at the shopping centre, and the Committee noted that this wasn’t challenged by the applicant.
- 6.8 On this basis, the Committee considered that the current provision of pharmaceutical services could not be said to be wholly inadequate and therefore determined that the application was not necessary. The Committee went on to consider, on the spectrum of adequacy, whether the application was expedient.
- 6.9 The Committee noted that there are currently two pharmacies operated by two different contractors within the defined neighbourhood, with a third pharmacy located on the boundary, and the Committee viewed this to be a reasonable choice of provider.
- 6.10 The Committee noted the PCT’s confirmation that the existing pharmacies provide all currently commissioned services and would be willing to provide additional services should the need arise. The Committee further noted that the applicant offers no advantage over existing provision in terms of opening hours.
- 6.11 The Committee noted that the area is due to undergo re-development including housing and a new health centre, however had been given no indication as to the timescale involved. The Committee noted the LPC comment that the Barratt Homes development does not have planning permission yet. The Committee were mindful that there is a significant population within the neighbourhood which is likely to be increased by the development, however there is uncertainty regarding the timescale and the Committee saw no information to conclude that existing pharmacies were not coping with the current level of demand for pharmaceutical services, or that they would not be able to do so in the future.
- 6.12 The Committee accepted that the application may offer a geographical advantage for those to the north and east however were of the view that this is not a factor to be considered alone in accordance with the relevant test unless the degree is sufficiently high on the scale to suggest it would contribute to a gap in provision. On balance, having had regard to choice and access to the current provision of services within the

neighbourhood, the Committee determined that services were currently secured to the level of adequacy and therefore it was not expedient to grant the application.

7 **Decision**

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

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Lloyds Pharmacy Ltd
Southwark PCT
Carefield Ltd
Lambeth, Southwark and Lewisham LPC