

23<sup>rd</sup> December 2009

**REF: SHA/15415**

**APPEAL AGAINST SOUTH GLOUCESTERSHIRE PCT  
DECISION TO REFUSE AN APPLICATION BY A & H  
PHARMACIES LTD FOR PRELIMINARY CONSENT  
PRIOR TO INCLUSION IN THE PHARMACEUTICAL  
LIST IN THE VICINITY OF CADBURY HEATH HEALTH  
CENTRE, BRISTOL BS30 8HS**

**1 The Application**

By application received on 28<sup>th</sup> April 2009, A & H Pharmacies Ltd ("the Applicant") applied to South Gloucestershire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of Cadbury Heath Health Centre, Bristol BS30 8HS. In support of the application it was stated:

- 1.1 The proposed neighbourhood that the pharmacy will serve is in the immediate vicinity of Cadbury Heath Health Centre. The nearest current pharmaceutical provision is a 0.2 mile walk for patients. The elderly or mothers with young children find this difficult as they need to cross an increasingly busy road to Alliance Pharmacy and then continue to 1 School Road, Cadbury Heath. This pharmacy has not provided (since the introduction of the new pharmacy contract) and does not currently provide any facilities for Advanced services. Depending on the commissioned enhanced services these too are somewhat limited due to the lack of consultation room facilities.
- 1.2 The current pharmaceutical service for those patients that choose to use this pharmacy are therefore inadequate.
- 1.3 The next Pharmaceutical choice that a patient has is from either Boots the Chemist at Longwell Green or Ellacombe Pharmacy, Longwell Green. Both of which require transportation. For those patients without transport the current provision of pharmaceutical services is inadequate as they do not have provision to receive advanced services as set out in the pharmacy contract. Over the past 10 years there has been and continues to be a substantial change to the neighbourhood that these pharmacies provide pharmaceutical services for, it is therefore necessary and desirable to grant a new pharmacy contract to provide adequate, accessible pharmaceutical services to the neighbourhood.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 18<sup>th</sup> September 2009 states:

- 2.1 The neighbourhood was defined as the boundary to be from the junction of Marsham Way north along the A4172 to the junction of the A420 then East along the A420 to Tower Road. Follow this road to the junction of Court Road which then becomes California Road this then becomes Watsons Road and then follow the A431 until it meets Marsham Way back to the A4171.
- 2.2 Competition and choice have also been considered in relation to the neighbourhood.
- 2.3 Adequacy of Existing Pharmaceutical Service Provision
  - 2.3.1 There are six pharmacies within 2km of the proposed location together with one health centre. The pharmacies all provide services at various times during the working day together with one 100 hour pharmacy within the 2km.

- 2.4 Range of Services within the area
- 2.4.1 The PCT considers that the range of services that already exist in the area support the needs of the population. Essential, Enhanced and Advanced services are provided by the existing contractors and the opening hours provide adequate pharmaceutical services to allow access over a range of hours.
- 2.5 Choice of Services
- 2.5.1 The PCT considers that the choice of services that already exist in the area support the needs of the population.
- 2.6 Decision
- 2.6.1 Having considered the above information the PCT's view is that provision of pharmaceutical services in the neighbourhood is currently adequate. It is neither necessary nor desirable that additional pharmaceutical services are provided in the neighbourhood in order to secure adequate provision.
- 2.6.2 The PCT's decision is therefore that the application by A&H Pharmacies Ltd to join pharmaceutical list of South Gloucestershire PCT for preliminary consent in vicinity of Cadbury Heath Health Centre, Bristol, BS30 8HS is rejected.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 13<sup>th</sup> October 2009, the Applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The PCT has failed to give any adequate reasons for its decision and has simply defined the neighbourhood and then made decisions based not on the defined neighbourhood but a 2km radius from the proposed location.
- 3.2 The PCT has failed in its duty under the NHS regulations 2005 in determining a pharmaceutical application within a 4 month time frame of the application being made thus A & H Pharmacies believe this may have unnecessarily prejudice the decision of the application.
- 3.3 The PCT has failed to consider the requirement under Regulation 12(2)(b) to have particular regard to whether or not there is reasonable choice of both services and service providers in the defined neighbourhood.
- 3.4 A & H Pharmacies considers the PCT defined neighbourhood to be too large for an urban area and is of the opinion that the residents living close to the proposed site would not consider themselves as neighbours to those to the South of the PCT defined neighbourhood on for example, California Road. The type and density of the dwellings varies enormously within the PCT defined neighbourhood. A&H Pharmacies consider their proposed neighbourhood to be a neighbourhood with its own identity and facilities frequented by the local population as part of their everyday lives which includes various shops, GP surgeries and schools.
- 3.5 The neighbourhood falls within Parkwall ward with a resident population of 7,916 (2001 census). Cadbury Heath Health centre incorporates the practices of The Oaks and The Park and serve some 15,000 patients.
- 3.6 The only current provider of Pharmaceutical services within the PCT defined neighbourhood is Alliance Boots at School Lane. With just a single pharmacy in the

neighbourhood there is clearly no choice of pharmacy services or service provider. Indeed the next nearest Pharmacy, Boots at Longwell Green is owned by the same contractor.

- 3.7 The proposed opening hours reflect the opening of Cadbury Heath Health centre providing an additional hour opening each weekday morning and evening compared with Alliance Boots and an additional 30mins during lunch. This will provide easy access to pharmacy services for patients with early morning or evening appointments and workers.
- 3.8 It should be noted that Alliance Boots still closes the dispensary between 1pm and 1.30pm. This results in the workforce in the neighbourhood having limited access to pharmacy services, whether prescriptions, P medicines or advice during their lunch hour.
- 3.9 From a telephone call to Alliance Boots it was stated that they only deliver to house bound patients. A&H Pharmacies would provide a delivery service for all patients. It is submitted that the lack of a delivery service is indicative of a monopoly situation.
- 3.10 Access to Alliance Boots is restricted to those in a wheelchair or pushing buggies by a narrow doorway, a step into the Pharmacy and limited space within the Pharmacy thus for these patients it is at least desirable to grant an additional pharmaceutical contract.
- 3.11 A&H Pharmacies believe the PCT have failed to properly consider choice within the neighbourhood as both the nearest Pharmacies are operated by one contractor thus competition of services and pricing of OTC products is monopolised.
- 3.12 The closest pharmacy is some 10 minutes walk from the surgery and indeed the Pharmacies own staff access the surgery by car to collect prescriptions indicating that the access is not easy as described by Boots the Chemist in their letter dated 26<sup>th</sup> June 2009.
- 3.13 It is not acceptable to expect mothers with young children or an elderly person who does not have access to private transport to travel some 0.2miles to access pharmaceutical services especially during winter months on poorly lit streets. Therefore, access to the existing pharmacy could be described as inadequate.
- 3.14 Currently all patients (regardless of their dispensing status) must travel to the existing pharmacies to access 'Pharmacy Only' and GSL medications. The proposed pharmacy will provide this important service enabling residents and patients easy access to a complete range of medication.
- 3.15 The closest Pharmacy, Alliance Pharmacy, 1 School Road, Cadbury Heath has not provided any Advanced Services since the introduction of the New Pharmacy Contract due to lack of a consultation room. This further proves the inadequacy of the current service as patients have no access to tier 2 of the contract and limited access to tier 3, enhanced services, that require consultation room facilities, A&H Pharmacies intend to provide all Essential, Advanced and Enhanced services within the neighbourhood to meet the needs of the patients.
- 3.16 The lack of provision of Advanced services indicates that the granting of a new pharmaceutical contract is at the very least, desirable.
- 3.17 The granting of this application will secure adequate pharmaceutical services in the neighbourhood.

#### 4 **Summary of Representations**

This is a summary of representations received on the appeal. A summary of those representations made to the PCT are only included in so far as they are relevant and add to those received on the appeal.

#### 4.1 AVON LPC

4.1.1 The Avon LPC wish their letter dated 23<sup>rd</sup> June 2009 to be considered.

Letter dated 23<sup>rd</sup> June 2009 to the Avon PCSA

4.1.2 The committee considered the above application and agreed there were adequate pharmaceutical services. Therefore, the committee agreed this application to be neither necessary nor desirable for an additional contract to secure adequate provision of Pharmaceutical services.

#### 4.2 ELLACOMBE PHARMACY

4.2.1 Ellacombe Pharmacy wish to object most strongly to the above application by A & H Pharmacies Ltd to join the pharmaceutical List of South Gloucestershire PCT in the vicinity of Cadbury Heath Health centre.

4.2.2 The appeal letter from the applicants does not paint a true and complete picture of the area served by Cadbury Heath Health centre. As stated in the original application, the nearest current pharmaceutical provision is a mere 0.2 miles east away for the patients. The road outside the Health Centre is not a major road and is no way impossible to cross as implied in the application. In fact, islands have recently been installed to facilitate crossing. There is not a considerable amount of traffic anyway and all roads in and around the centre are well lit and are supported by a comprehensive local transport system.

4.2.3 Many patients all around from both the south and east side of the Health Centre also attend, many of whom are served by Ellacombe Pharmacy. Ellacombe Pharmacy are only positioned 0.7 of a mile away. Here Ellacombe Pharmacy have a private Consulting Room, in use regularly, and provide disabled access via a ramp in to the pharmacy used many times by wheelchairs and prams, the shop itself being spacious inside. Ellacombe Pharmacy also provides a daily Prescription Collection and Delivery Service, along with other medicines and items needed, available to all who request it. Ellacombe Pharmacy's drivers know all their regulars by name and frequently check on their well-being via their own dedicated vehicle. Emergency deliveries are regularly requested by the surgery themselves.

4.2.4 Advanced and Enhanced Services are in the process of application at the present time as each service is needed in the area. Ellacombe Pharmacy already run Blood Pressure Monitoring, Weight Management Consultations and are now aiming at Smoking Cessation. Ellacombe Pharmacy have built up a large customer base over the past 20 years trading and have gained a respect and confidence that is important to the local community. This risks being lost if this is diluted.

4.2.5 The new Boots Pharmacy at Longwell Green is less than one mile away to the northwest from the Health Centre also. This pharmacy has only recently been granted a licence and has thus increased the distribution of pharmaceutical services already in the area.

4.2.6 Being an Independent, Ellacombe Pharmacy offer an alternative choice to Boots. Pharmacies like their own and at Warmley, Oldland and Kingswood already provide a completely satisfactory and comprehensive service to all the patients attending Cadbury Heath Health Centre.

4.2.7 Therefore granting yet another contract within this area would definitely affect the viability and stability of Ellacombe Pharmacy.

#### 4.3 AVON PCSA

4.3.1 South Gloucestershire PCT would like to make the following comments in response to Mr Mohammed Haji's points:

4.3.2 The PCT replied in the deadline given to them by the PCSA.

4.3.3 The resident population has been defined as 7,916 by A & H Pharmacies whereas the practice population is 15,000 so nearly half of the patients will be accessing pharmaceutical services from pharmacies in their neighbourhood. It is the PCT's opinion that a neighbourhood with a population of 7,916 is too small to be considered as a neighbourhood for the purposes of a pharmacy application which is why the PCT redefined the neighbourhood.

4.3.4 It is not unreasonable for a dispensary to close for 30 minutes to allow an adequate rest break to be taken by a pharmacist. Responsible Pharmacist Regulations allow for this.

4.3.5 There is not a lack of a delivery service it is reserved for vulnerable patients.

4.3.6 The PCT has not received any complaints concerning lack of access to the pharmacy.

4.3.7 A 10 minute walk is not an unreasonable distance to travel. The pharmacy has a prescription collection service for patients and also a delivery service for housebound patients. The fact that pharmacy staff themselves drive to the health centre in (*sic*) not unusual as they will be collecting from other surgeries at the same time.

4.3.8 The streets are not poorly lit and the roads have multiple crossing points and significant traffic calming measures have been implemented.

4.3.9 Advanced services are dependant on all Essential services part of the contract being fulfilled. This can only be determined from a Pharmacy Contract Monitoring visit. Enhanced services are commissioned by the PCT from a provider so again there is no guarantee that the PCT would commission Enhanced services from the proposed new pharmacy.

4.3.10 There are Advanced services provided from other pharmacies within the area. Currently Advanced services are only available in the form of an MUR and these are limited to 400 per year per pharmacy. This equates to 2% of the practice population which is not a significant number to base the decision to grant a new pharmacy contract on. Again the PCT had not received any complaints from patients about this and there are a significant number of other pharmacies in the area that are able to provide this service.

#### 4.4 BOOTS UK LTD

##### Neighbourhood

4.4.1 Boots agree with the neighbourhood defined by the PCT, the boundaries of which define the area known as Cadbury Heath. This is an established residential area consisting of mix of housing types, a large proportion of these dwellings are owner occupied.

- 4.4.2 The eastern boundary of Tower Road reflects that of the adjacent neighbourhood of North Common as defined at appeal in April 2009 (Case Ref SHA/14732). The boundary to the south denotes the change in neighbourhood to that of Old Common.

#### Access to the existing pharmacies

- 4.4.3 Boots pharmacy at School Road is situated amongst a parade of shops that are a focal point of the Cadbury Heath neighbourhood.
- 4.4.4 The journey on foot between Cadbury Heath Health Centre and Boots pharmacy at School Road is a distance of only 510 metres 'door to door' via the most practicable route along Parkwall Road and Newton Road (distance measured by surveyors wheel). The journey time on foot takes approximately 5 minutes.
- 4.4.5 The route is through the residential area with maintained pavements and street lighting. There are dropped curbs at all pavement edges along the route. There is a pedestrian crossing point directly outside the surgery with dropped curbs. The roads between the Health Centre and Boots pharmacy are typical of such a residential area; they are not busy and can be crossed easily. There are no significant inclines between the two locations.
- 4.4.6 Pedestrians may also choose to take an alternative route along Earlstone Crescent via the school at a distance of 610 metres. Boots do not agree with the applicant's view that many mothers with young children find the journey difficult, as many will make this journey to the primary school on Earlstone Crescent.
- 4.4.7 For patients who wish to access services by car, the route to the 'Alliance' Pharmacy is direct and free parking is available directly outside the pharmacy. Plentiful free parking, is also available directly outside the Boots Pharmacy at Longwell Green which is located a short drive away. Disabled parking spaces are available directly outside the pharmacy.
- 4.4.8 Public transport is available for those who wish to use it with the number 45 service running frequently between Parkwall Road and Park Crescent.

#### Adequacy of the existing services

- 4.4.9 Boots pharmacy at Cadbury Heath is open six days a week and currently provides enhanced services including, needle exchange, supervised administration, repeat dispensing, and free prescription collection and delivery services. Boots' store has a permanent pharmacist who is accredited to provide additional services should the PCT wish to commission them from Boots. Boots are not aware that patients are experiencing any difficulty gaining access to their store.
- 4.4.10 Boots pharmacy at Longwell Green is open for extended hours opening from 7.30am until Midnight Monday to Saturday and from 10am until 4pm on Sunday. This pharmacy provide advanced and enhanced services including, Medicines Use Reviews, supervised administration, needle exchange, Smoking Cessation, services to care homes and free prescription collection and delivery services.
- 4.4.11 The applicant has mentioned the half an hour lunchtime closure of Boots pharmacy at School Road. Anyone requiring services during this time will be able to access services at Longwell Green. To Boots' knowledge any significant workforce in the neighbourhood is likely to be located in the area in and around the retail park. Boots believe therefore that any workforce in

the neighbourhood requiring services for this short period at lunchtime will find their pharmacy at the retail park easily accessible.

4.4.12 The applicant is not proposing opening hours or services that, if not already provided, could not be commissioned from one of the existing pharmacies should the PCT identify a need.

4.4.13 The applicant has failed to provide any evidence to suggest an inadequacy in services in the neighbourhood in question. Furthermore, there have been no complaints to Boots' knowledge to the PCT or LPC to prove that the provision of pharmaceutical services is anything other than adequate.

#### Choice

4.4.14 The PCT have clearly stated in their decision letter that they have considered choice in relation to the neighbourhood.

4.4.15 Patients currently have access to an extensive choice of pharmaceutical services provided and extended core hours of opening in the neighbourhood. Should patients for whatever reason, require further choice, then, they may choose to visit one of the additional pharmacies in the adjacent neighbourhoods. For these reasons Boots submit that patients of the Cadbury Heath neighbourhood have reasonable choice.

#### Other matters

4.4.16 The applicant has made reference at point 1.12 of their letter to comments made in Boots' letter to the PCT. Boots fail to see how the applicant has reached this conclusion from their comments and have enclosed a copy of our letter for the Appeal Unit's information.

#### Summary

4.4.17 In summary, Boots submit that patients in the neighbourhood have access to a range of advanced and enhanced services available at times to meet their needs and that Boots' view echoed by the PCT in their decision letter.

4.4.18 Boots firmly believe that patients visiting the health centre will have no difficulty travelling the short distance to Boots pharmacy at School Road either on foot, by car or by bus. Free delivery services are available to anyone who requires them.

4.4.19 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

## 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 that the Applicant had disputed the PCT neighbourhood as being too large, however had not provided an alternative definition. On considering the PCT definition, the Committee noted that a site visit had been undertaken and it appeared to be based on appropriate features in the area. In the absence of any alternative suggestions, the Committee were content to accept the PCT neighbourhood without prejudice to future applications.
- 5.7 The Committee noted that there are two pharmacies within the neighbourhood with the nearest, Alliance Boots, stated by the Applicant to be 0.2 miles from the proposed site. On considering the PCT map, the Committee also noted that the second pharmacy, Boots, was unlikely to be a much greater distance than 0.2 miles from the proposed site. The Committee further noted pharmacies in adjacent neighbourhoods, with Ellacombe Pharmacy to the south stated to be 0.7 miles distant by the pharmacy itself.
- 5.8 Given the current distribution of pharmaceutical services as noted above, 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 expedient.
- 5.9 The Committee noted the Applicant's comments regarding difficulties accessing Alliance Boots on School Road. The Committee were mindful that this pharmacy is only 0.2 miles distant and did not consider this to be an unreasonable distance for any mode of travel. The Committee had regard to comments that the route to Alliance Boots is through a residential area where the streets are well lit, and that there are dropped kerbs and islands to aid crossing. The Committee further noted Boots' confirmation that free parking is available outside the pharmacy, as well as at their Longwell Green store to the west.
- 5.10 The Committee had been provided with no information to consider regarding the demographics of the population within the neighbourhood.
- 5.11 The Committee noted that the Applicant states that they will provide all Advanced and Enhanced services. The Committee also noted comments from the PCT and other pharmacies regarding the services already provided. The Committee were mindful that it is open to the PCT to commission further services from existing contractors where there is a need to do so. The Committee had no information on which to base a conclusion that the existing pharmacies have not, and will not be able to respond to the changing needs of the population.
- 5.12 The Committee noted the Applicant's reference to opening hours. However the Committee was mindful that the PCT already has the power to amend the opening of hours of existing contractors where it feels there is a need to do so.
- 5.13 The Committee noted the Applicant's comments regarding choice. The Committee accepts that a potential gap exists when considering choice for the size of the population however were of the view that this factor cannot be afforded sufficient weight given the other factors referred to above. On balance, the Committee determined that the applicant had not demonstrated, the onus being on the applicant, that there is a gap on the spectrum of adequacy sufficient to conclude that the provision of pharmaceutical services is not currently secured to the standard of adequacy.

- 5.14 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the current provision within that neighbourhood together with any potential advantage that could be gained by granting this application, in particular by way of access and a reasonable choice of provider, given that a purpose of being in that neighbourhood may be to access primary medical services from which pharmaceutical services may be required by the reliant population, then the Committee determined that pharmaceutical services were currently secured to the extent that it was neither necessary nor expedient grant the application.

## 6 **Decision**

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

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

A copy of this decision is being sent to:

A & H Pharmacies Ltd  
Avon PCSA, on behalf of South Gloucestershire PCT  
Boots UK Ltd  
Ellacombe Pharmacy  
Avon LPC