

**APPEAL AGAINST DONCASTER PCT DECISION TO GRANT J M MCGILL LTD'S APPLICATION FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF THE SANDFORD ROAD, & PEMBROKE AVENUE JUNCTION, DONCASTER**

**1 The Application**

By application dated 21 November 2007, J M McGill Ltd ("the Applicant") applied to Doncaster Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list In the Vicinity of Sandford Road & Pembroke Avenue junction, Doncaster. In support of the application it was stated:

- 1.1 The applicant believes the neighbourhood is defined by the natural boundaries to the east, the commercial areas of Carr Hill and the top of Sandford Road, South to the grounds of St Catherine's Hospital, west the landfill site to the rear of Tickhill Road, Cross Street. A section of High Road to the north completing the neighbourhood boundaries.
- 1.2 From the 2001 census the neighbourhood is very deprived, 51% of households do not have access to a car, and 6% unemployment. As might be expected the health needs are high, using the 2001 census health data 27% have long term limiting illness.
- 1.3 The applicant believes it is an inequity and inadequacy of service that this relatively immobile population should have such a large distance to travel to access services, this is especially so for those residents in the south & east of the neighbourhood.
- 1.4 The applicant's proposed site is selected to address this inadequacy being approximately central to the neighbourhood and close to the main shops and other services such as the local post office and mini markets and general store bringing pharmaceutical services in to the day to day movement of residents.

**2 The PCT Decision**

The PCT considered and decided to grant the application. The decision letter dated 17 June 2009 states:

- 2.1 Doncaster Pharmacy Group had before it, the application, parties written representations, factual information (including community profiles, PNA extracts and a map of the neighbourhood), regulations and guidance.

Neighbourhood

- 2.2 For the purposes of the application, the Group adopted the same neighbourhood which was used to consider the application before.

Adequacy

- 2.3 The Group felt that pharmaceutical services were not adequate in the defined neighbourhood. Currently, there is one pharmacy situated in an isolated part of the neighbourhood and there is no choice of provider or services.

Necessary or Desirable

- 2.4 In relation to Doncaster there is high proportion of overcrowded households, lone parents, children in households with no earner and people in low social grades in the area.
- 2.5 The Public Health data contained in the community profile supports the Group's view that the neighbourhood is deprived. Its rank is 22/88 (1 is the most deprived); the Health and Disability rank is 19/88. Given the complexion of the neighbourhood, the Group felt there was a need for pharmacy services.
- 2.6 The site of the proposed pharmacy was in the centre of the most populated part of the neighbourhood and near to local shops. Should the application be approved, the elderly and young mothers with children would have access to pharmacy services in an area which is highly populated.
- 2.7 The Group acknowledged that the opening of the 100 hour pharmacy had changed service provision but it was situated outside the defined neighbourhood and access may be restricted.
- 2.8 The Group concluded the application was necessary and desirable for access to services within the defined neighbourhood and should be approved and made this recommendation to the Trust Board.
- 2.9 The recommendation was considered and endorsed by the Board on 4 June 2009. The application was therefore granted.

### **3 The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 7 July 2009, Rowlands Pharmacy appealed against the PCT's decision. The grounds of appeal are:

It is Rowlands contention that:

- 3.1 The decision is inconsistent with NHSLA decision (August 2008) to refuse an application by H I Weldrick at a site less than 500m from the proposed site.
- 3.2 That a 100hr pharmacy has opened in the locality at the top of Sandford Road which renders the application neither necessary nor desirable.

### **4 Preliminary Consideration**

- 4.1 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 of the proposed pharmacy.
- 4.2 It also had before it the responses to the Authority's own statutory consultations.
- 4.3 On the basis of this information, the Committee considered that it was necessary to hold an Oral Hearing, before determining the appeal.
- 4.4 On 15<sup>th</sup> October 2009 a panel was appointed to hear the appeal which took place on 12<sup>th</sup> November 2009 at Doncaster Race Course and a list of those who attended is annexed at Appendix A.

### **5 Summary of Written 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.

### **J M McGill Ltd (Applicant)**

- 5.1 This is the second time Doncaster PCT has granted this application. On the first occasion there was no appeal, however H I Weldrick Ltd sought a Judicial Review on the grounds that they were not circulated and the application, was quashed. This time the PCT have again granted the application. Rowlands Pharmacy now chooses to appeal. The applicant would like to make the following points.
- 5.2 The PCT has chosen a much wider neighbourhood than the applicant described in this application. In the more narrow definition the applicant describes, its western boundary was supported by the findings of 2 Oral Hearing panels the most recent ref.14462 on 14 August 2008. Ashfield Road is a one way street and prohibits movement, further enforcing this western boundary. The A630 forms an obvious northern boundary. In the section the applicant describes there is only one pedestrian crossing point. The applicant feels the extended eastern and southern boundaries taken by the PCT cannot be supported in practice. The line they draw along Carr Hill and Balby Carr Bank looks good on a map but dissect the Car Hill estate. (Appendix 1 provided).
- 5.3 The neighbourhood the applicant describes though smaller in area is densely populated with some 4000 patients. It is extremely deprived relative to Doncaster as a whole and even the Balby Area. 51% of households have no car compared to 43% for Balby as a whole. 57% of people are socio economic group D and E compared to 48% for Balby as a whole. As might be expected health needs are high 27% of patients having a long term limiting illness compared to 24% for Balby as a whole. The figures illustrate a very deprived neighbourhood within the deprived area of Balby. All figures from the 2001 census.
- 5.4 The neighbourhood is discreet from the surrounding areas being one large housing estate (it can be seen that Bronte Avenue, Woodfield Road and Pembroke Avenue all run either side of Sandford Road and are identical in housing and socio economic make up, along with the Tenby Road, Oliver Road area.
- 5.5 Rowlands appeal suggest that the adequacy found by the oral hearing panel for a Weldricks application in a different neighbourhood means there is no need for the current proposed pharmacy. The applicant should make it clear that their application is for a different neighbourhood, and there is no overlap between the 4000 patients they describe and the patients for whom the oral hearing panel decided adequacy.
- 5.6 Houses south of the applicant's neighbourhood, beyond St Catherine's Hospital Site comprise a different area altogether, being a new development of some 1700 houses with its own shops. It was built some 5 years ago and is called Woodfield Plantation. This southern area has its own pharmacy at Tesco but is distant and not easily accessible without a car. It was found at the Oral Hearing that the free Tesco bus which used to run was stopped some 2 years previously.
- 5.7 The map produced by the PCT shows a Post Office near "3"— on the A630. This was closed some 2 years ago in the round of Post office closures.
- 5.8 The A630 is a considerable barrier to services for patients on the section the applicant describes. It is an extremely busy dual carriageway, and along this section there is only one pedestrian crossing point (Appendix 2 and 3). Furthermore along this section the A630 is elevated varying between 20- 40ft above the land immediately south of it. (Appendix 4) Pedestrians travelling West along Low Road must use a steep gantry to reach the A630 on foot. A considerable barrier. Alternately patients would need to walk east to meet the A630 at Cross Street considerably

lengthening their journey, or from the west of the neighbourhood walk along Sandford Road which itself is very steep at its junction with the A630 and there is not a pedestrian crossing point there.

- 5.9 Rowlands pharmacy is immediately opposite the Balby Surgeries and is conveniently located for a patient who had to call at those doctors. (Appendix 5). The bus service into the applicant's neighbourhood runs from Greenfield Lane and has a stop just outside the Rowlands shop. However not all pharmacy services are dependant or reliant on having visited a Doctor. Also one third of the patients in the applicant's neighbourhood use Doctors from the Town centre practices rather than the Balby surgeries.
- 5.10 The new 100 hour pharmacy is positioned about 200m along the A630 east of the Greenfield Lane junction- any patient visiting the Balby surgery from the applicant's neighbourhood would have an extended journey to utilise the 100 hour shop. Leaving the surgery they would walk past the Rowlands pharmacy approximately 50m down to the end of Greenfield Lane, 200m on to the 100 hour pharmacy, then they would need to return, back the 250m to the Rowlands pharmacy to cross Greenfield lane on the pedestrian crossing, (Appendix 3) then a further 100m west to reach the only A630 pedestrian crossing along the section forming the northern boundary. Dependant on whom part of the neighbourhood a patient lived, they would then either walk to Cross Street and down, or down the gantry at Low Road, or back east to the top of Sandford Road.
- 5.11 The extended journeys created by the busy road are actually exaggerated if a patient were to use the 100 hour pharmacy. Its position offers no advantage to anyone living in the neighbourhood because of its position relative to the sole crossing point. There are no bus stops near it either to take patients back to the applicant's neighbourhood. These are positioned on Greenfield lane just north of the pedestrian crossing.
- 5.12 A patient who had used a town doctor would get off a bus on the south side of the dual carriageway and would have a similar extended journey to cross the road to the 100 hour shop then return to catch an onward bus.
- 5.13 The applicant's proposed site being on foot some 1600m from the other pharmacies will greatly improve patient access. Placing the pharmacy central to the neighbourhood as is proposed, adjoining local shops and the Post Office will greatly improve access for patients, bringing pharmacy services into the day to day movements of the neighbourhood, and remedy the inadequacy which currently exists.
- 5.14 The applicant asks that the Appeal Authority uphold their granted application and dismiss the appeal

### **Doncaster Primary Care Trust**

- 5.15 The PCT has no additional comments to make regarding this application.

## **6 Evidence at the Appeal**

### **6.1 Mr McGill ( for the applicant)**

- 6.1.1 With regards to neighbourhood the map on page 43 showed the whole of the area of Balby but this was too large to be a neighbourhood.
- 6.1.2 There were separate neighbourhoods within Balby.
- 6.1.3 His neighbourhood was the Woodfield Estate. The natural boundaries were the Industrial Estate, Sandford Road, the A630, the hospital site and the old landfill site to the west.

- 6.1.4 The PCT neighbourhood was too large.
- 6.1.5 The Woodfield plantation to the south of his neighbourhood had a different profile. The Tesco superstore was situated there. The houses in the Woodfield plantation were similar to the houses to the west of Tickhill Road.
- 6.1.6 His neighbourhood comprised between 3,400 and 4,000 residents. An extra 120 homes had been constructed since the last census. The neighbourhood had its own schools, post office and shops. A number of roads ran from east to west across Sandford Road without changing their names. The area had its own tenants association.
- 6.1.7 The neighbourhood had high unemployment and was isolated from a number of services.
- 6.1.8 Deprivation was a key pointer for demand.
- 6.1.9 He produced several statistics using UV67 scores highlighting the deprivation of the area. UV67 measured deprivation based upon a number of factors including housing, health and employment.
- 6.1.10 Two output areas within Balby in particular scored very poorly for deprivation.
- 6.1.11 51% of households had no access to a car. 27% of residents in Woodfield suffered from a limiting long term illness.
- 6.1.12 With regard to access, none of the residents from his neighbourhood would walk to the Tesco store. It was possible to catch a bus south down Sandford Road but the nearest bus stop to Tesco was on the roundabout on the A50 and there would still be a substantial walk to get to Tesco.
- 6.1.13 He described several ways of accessing the pharmacies to the north of the A630 but that road is a significant barrier.
- 6.1.14 The 100 hour pharmacy that had opened on the A630 had not improved access as it was so close to the existing Rowlands pharmacy.
- 6.1.15 The PCT would shortly be introducing a minor ailments enhanced service. It already offered smoking cessation and EHC.
- 6.1.16 It was thought that 34% of neighbourhood residents used doctors in the town centre. Those who could not drive went there by bus
- 6.1.17 There were some visitors to the neighbourhood being pupils to the secondary school and staff working at the hospital to the south.
- 6.1.18 All locals were enthusiastic about the application and a number of them had commented that it was easier to get to the town centre than to use the nearby pharmacies.
- 6.1.19 Many of the locals did their main shopping in the town centre. In particular there was a well used market.
- 6.1.20 A number of residents from the neighbourhood attended the church to the north of A630 near to the Rowlands pharmacy.
- 6.1.21 Supervised provision of Methadone was a local enhanced service that he offered from his present pharmacy in Balby. He also offered MURs there

although he did not do domiciliary MURs. He was almost certain to do the maximum number of MURs in the current financial year.

- 6.1.22 It was not thought that there were any care homes in the area but there were clusters of bungalows for the elderly.
- 6.1.23 Substance misuse was a considerable problem in the locality.
- 6.1.24 Other typical local health problems included heart disease and lung cancer both aggravated by a high incidence of smoking.

## **6.2 Mr Clarkson (representing the PCT)**

- 6.2.1 He confirmed that the PCT maintained its decision including the definition of neighbourhood.
- 6.2.2 He accepted that the Woodfield plantation to the south of St Catherine's hospital was a wealthy area.
- 6.2.3 The A630 to the north was a significant barrier and therefore a neighbourhood boundary.
- 6.2.4 With regards to choice the population had no choice at all. There was either no pharmacy in the neighbourhood or just one depending on which definition was accepted.
- 6.2.5 A significant number of residents from the locality attended doctors outside the Balby area.
- 6.2.6 It was not thought that there were any gaps in the provision of pharmaceutical service locally.
- 6.2.7 The PNA was in the course of being reviewed.
- 6.2.8 One of the pharmacies in Balby was seeking leave to carry out more than the usual permitted number of MURs.

## **6.3 Mr S Thomas (Rowlands)**

- 6.3.1 He generally agreed with the applicants definition of neighbourhood, however the A630 was not a significant barrier. There were a number of crossing points.
- 6.3.2 The present application was very similar to the application last year that had been refused.
- 6.3.3 The local parish included areas to the north and south of the A630.
- 6.3.4 34% of the local residents from Balby went to GPs in the town centre.
- 6.3.5 The locals used the bus service and there was also a Doncaster community transport which offered dial a ride services.
- 6.3.6 The town centre market and the town centre shops were both well used. There was a good bus service from Balby to the interchange.
- 6.3.7 The largest store within the neighbourhood was only small. Most of the residents left the neighbourhood regularly for major shopping.

- 6.3.8 Parking at the Rowlands pharmacy was ample. The pharmacy had two pharmacists on duty four days per week and the pharmacy would complete its quota of 400 MURs.
- 6.3.9 It was considered that the census data regarding the number of households with use of a car was out of date. The figure would have increased since 2001. In any event most people knew friends or relatives who had use of a car and were able to help.
- 6.3.10 The Rowlands pharmacy offered the residents of the neighbourhood all the essential and advanced services and all the enhanced services commissioned by the PCT together with other services offered by Rowlands.
- 6.3.11 The latest waiting times analysis had shown that customers were only waiting 11 minutes during the busy times.
- 6.3.12 97% of the customers had considered the service at Rowlands to be good, very good or excellent.
- 6.3.13 All the local pharmacies offered a good collection and delivery service.
- 6.3.14 Choice could be satisfied by pharmacies outside the neighbourhood.
- 6.3.15 The applicant would not add anything to provision of pharmacy services in the area.

## **7 Site Visit**

- 7.1.1 The panel approached Balby from the east but noted that there is no direct access into Balby from the east. Nor is there any direct access into Balby from the M18 which runs from east to west just south of Balby.
- 7.1.2 The panel were shown an uncompleted spur road leading off a main access to the motorway which might one day link up with the approach to the Tesco store in Balby but there are no current plans to complete this road. The panel drove north from there through the industrial estate to the east of Balby onto the A630 Balby Road. This is a busy dual carriageway being one of the main roads into Doncaster from the A1. In parts the road is significantly higher than the housing and other buildings to its south. The road is fronted by a mixture of shops, offices and housing. There are a number of light controlled pedestrian crossings across the road and also a subway near to the intersection with Sandford Road. Perhaps because of the volume of traffic using the road the panel noticed how long it took to cross the road at one of the light controlled crossing points.
- 7.1.3 The panel travelled down Sandford Road through Woodfield into the Woodfield Plantation estate and visited the Tesco superstore. The store is large with an extensive free car park. There is a pharmacy at the back of the store. There is no bus service directly to the store and with it being rather isolated and because of the layout of the approach roads it did not seem practical for nearby residents to walk to the store.
- 7.1.4 The housing surrounding the store is of good quality and in some cases new.
- 7.1.5 The housing in Woodfield Plantation is divided from the housing to the north near the site of the application by a sprawling hospital site which includes St Johns Hospice.

- 7.1.6 The panel then drove through the Woodfield estate to the north of the hospitals. This is poorer quality housing and in some cases the houses were formerly prefabricated. Many of the houses did not have private driveways. The panel noticed one or two small parades of shops. One of the parades on Sandford Road near its junction with Pembroke Avenue was assumed to be the site of the application. Parking was available on side streets or on a small layby in front of the parade. The shops included a café, a hair salon, a Costcutter food store which included a post office and a fish and chip shop which was advertised for sale.
- 7.1.7 The panel walked from the parade of shops to the Rowlands pharmacy north of the A630. The distance was measured to 1,028 metres and took 20 minutes at a leisurely pace. The panel kept to the main roads and acknowledged that there would be shorter ways to make the journey.
- 7.1.8 There is a gradual incline north along Sandford Road to the point at which it meets the A630. As the main road is approached the incline becomes more significant.
- 7.1.9 Buses run every 12 minutes along Sandford Road and one of the services goes to the town centre.
- 7.1.10 The panel walked past an army barracks and also a Lidl food store on Sandford Road just before its junction with the A630.
- 7.1.11 The panel inspected the 100 hour pharmacy on the A630. This pharmacy has only a small frontage and there were no customers at the time of the panels visit.
- 7.1.12 The panel also visited the two doctors surgeries which are situated approximately 50 metres north of the A630 on Greenfield Lane. The two surgeries are both large but are separate although they share the same car park which was congested at the time of the panels visit.
- 7.1.13 On the other side of Greenfield Lane is the Rowlands pharmacy which operates from a converted village hall type of building. The pharmacy is extremely well appointed and has its own private car park. There are chairs available for customers waiting to be served, two of which were occupied at the time of the panels visit.
- 7.1.14 The panel observed a number of patients leaving the doctors surgeries and most of them went across the road to the Rowlands pharmacy.
- 7.1.15 The panel noted that there were two pharmacists on duty at the Rowlands pharmacy.
- 7.1.16 The panel then drove to the north out of the Balby area over the railway line into Hexthorpe but this seemed to be a totally distinct area from Balby.
- 7.1.17 The panel then drove through the houses to the north of the A630 behind the applicants present pharmacy. The houses were of poor quality and were similar in character to the houses immediately to the south of the A630 at that point.
- 7.1.18 The applicants present pharmacy is a double fronted unit in a large precinct fronting the main road. The pharmacy itself occupies only half of the unit with the other half being used for consulting rooms and other non retail operations.
- 7.1.19 Parking is available in front of these shops in a layby.

- 7.1.20 The panel then drove further into the houses to the south of the A630 which area had been the subject of the preliminary consent application in 2008.
- 7.1.21 Finally the panel drove through the housing to the west of Tickhill Road opposite St Catherine's hospital. This is fairly similar in character to the houses in Woodfield Plantation being of better quality than the housing surrounding the site of the present application.
- 7.1.22 The Panel observed no ongoing developments taking place within the Balby area and were not advised of any development proposals although there are a number of vacant sites where development could occur at some stage in the future.

## **8 Panels Conclusions**

- 8.1.1 The panel accepted the applicants definition of neighbourhood. The PCT neighbourhood was too large. The A630 was a definite barrier to the north largely because of the steep incline as the road was approached. It was noted that the significant elevation of the A630 above the land to the south did not extend to the western section of that road (Warmsworth Road) so the panel could well understand why the appeal in 2008 did not consider it to be a barrier at that point.
- 8.1.2 The industrial area to the east was inaccessible and of a totally different character and it was not easy to travel west into the neighbourhood defined in last years application.
- 8.1.3 It was difficult to decide whether or not the hospital site should be included within the neighbourhood but the panel did not think that this would materially affect the outcome of the application.
- 8.1.4 As mentioned in the site visit report the housing in Woodfield Plantation and the housing to the west of Tickhill Road were of a different character to the housing to the north of the hospitals reinforcing the panel's belief that these houses formed a different neighbourhood.
- 8.1.5 The applicant's neighbourhood would have very few visitors being mainly pupils at the local schools and perhaps a few staff working at the hospitals. There are no significant services within the neighbourhood and it was assumed that the local population left the neighbourhood on a regular basis in order to obtain various services including medical services.
- 8.1.6 The access to other local pharmacies outside the neighbourhood was not considered by the panel to be particularly good. The pharmacy within the Tesco store to the south was only suitable for residents with access to a car. The walk to the two pharmacies to the north of the neighbourhood and also the applicants current pharmacy is difficult involving the crossing of a busy dual carriageway and a significant incline leading up to it.
- 8.1.7 The panel accepted that the neighbourhood suffered from considerable health and economic deprivation. There was clearly a high demand for pharmaceutical services locally. The two local established pharmacies operated by the applicant and Rowlands were both extremely busy although there was no suggestion that they could not cope with the demands put on them and the newly opened 100 hour pharmacy would deal with any demand for a service outside normal business hours.
- 8.1.8 Evidence had been given that there was possibly a need for more MURs to be made available and the panel noted in particular that the PCT would be shortly be introducing a minor ailments enhanced service. This the panel

considered would be of considerable benefit to the residents of the neighbourhood who for whatever reason were not able to visit a doctors surgery.

- 8.1.9 The panel acknowledged that there was an extensive collection and delivery service available within the neighbourhood but this could never provide the services and advice that was available within a pharmacy.
- 8.1.10 Having accepted the applicant's definition of neighbourhood it follows that there is no pharmacy in the neighbourhood and therefore no choice. The panel considered the available choice of providers and services outside the neighbourhood and taking them into account did not consider that the present application would improve the choice currently available to local residents.
- 8.1.11 It had been argued that pharmaceutical services within the neighbourhood were adequate being provided by pharmacies close to the neighbourhood boundary. However the panel were unanimous in concluding that given the deprivation of the local residents and the difficulties encountered in accessing pharmacies outside the neighbourhood due to the geography of the area the provision of pharmaceutical services within the neighbourhood was not adequate and that the decision of the PCT to grant the application should be supported. It was considered to be desirable that the application should be granted in order to secure an adequacy of pharmaceutical provision within the neighbourhood.
- 8.1.12 A pharmacy within the neighbourhood would give the local residents immediate access to several services that were clearly needed and which at present were in some cases difficult to obtain.

## 9 Recommendations

- 9.1.1 The panel would accordingly recommend that the appeals be dismissed and the application granted.

Signed.....

Alan Tomlinson

Phil Bratley

Carol Dorking

Dated this

day of

2009

## APPENDIX A

### ORAL HEARING ATTENDANCE LIST

#### CHAIR

Mr Alan Tomlinson

#### PANEL

Mr Phil Bratley

Mrs Carol Dorking

**APPLICANT**

Jonathan McGill  
Roger Appleyard

J M McGill Ltd

**APPELLANTS**

Mr Stephen Thomas  
Mr David Young  
Mr Carl Stokes

Rowlands Pharmacy  
Rowlands Pharmacy  
Rowlands Pharmacy

**INTERESTED PARTIES**

Mr Nick Hunter

Doncaster LPC

**DONCASTER PCT**

Mr R Clarkson  
Mr Michael Geraghty  
Mrs Elizabeth Durrans

Beachcrofts LLP  
Primary Care Commissioning Manager  
Head of Primary Care Contract & Performance

Admin Support

Mrs Elaine Becker  
Mrs Lynne Roome

Primary Care Admin Support Officer  
Contractor Administrator

**OBSERVER**

Mr Mark Niles

NHSLA – Family Health Services Appeal Unit