

15 January 2010

REF: SHA/15400

**APPEAL AGAINST DERBYSHIRE COUNTY PCT
DECISION TO REFUSE W R EVANS (CHEMIST) LTD
APPLICATION FOR PRELIMINARY CONSENT PRIOR
TO CHANGE OF PREMISES FROM 465 TAMWORTH
ROAD, LONG EATON NG10 3GR TO DRAYCOTT ROAD
(VICINITY OF), OLD SAWLEY, LONG EATON**

1 The Application

By undated application sent to the PCT on 22 May 2009, W R Evans (Chemist) Ltd (“the Applicant”) applied to Derbyshire County Primary Care Trust (“the PCT”) for preliminary consent prior to change of premises from 465 Tamworth Road, Long Eaton NG10 3GR to Draycott Road (vicinity of), Old Sawley, Long Eaton. In support of the application it was stated:

Neighbourhood

- 1.1 The neighbourhood for this application is Sawley within Long Eaton. Sawley is an area of predominantly social housing with a high percentage of elderly, less mobile, patients and those on low income. As such, there is an increased prevalence of morbidity within the area. This population also finds it difficult to attend the pharmacies located within Long Eaton town centre.
- 1.2 Community pharmacies must be located where they are needed most — in the heart of local communities. This has been achieved by creating a wide geographical distribution of community pharmacies guaranteeing ready and easy access from where people live and work as well as from the GP’s surgery.
- 1.3 A community pharmacy is the cornerstone of primary care and makes a vital contribution to patient care and health improvement, both as individual professionals and as part of the wider National Health Services.
- 1.4 There is a planned relocation of the Sawley branch surgery to an area of land adjacent to Draycott Road in Sawley. This land is close to the existing branch surgery and is on the bus route connecting Sawley to Long Eaton.

Existing Pharmaceutical Services

- 1.5 We believe the existing provision of pharmaceutical services within Sawley is already adequate to meet the needs of the population. A change of premises” or “major relocation” will offer patients improved access to full pharmaceutical services, once the surgery relocates.
- 1.6 Our existing pharmacy is located at 465 Tamworth Road, Long Eaton; we provide all advanced services and enhanced services which are commissioned by Derbyshire County PCT. However the pharmacy layout is constrained by the size and layout of this old building. There is also limited parking available which restricts access to the existing pharmaceutical service. Our pharmacy offers a free comprehensive prescription collection and delivery service which is very well used and appreciated by the elderly population of Sawley.#

Necessary and Desirable

- 1.7 WR Evans (Chemist) Ltd wishes to build a future proof community pharmacy which is fit for purpose to be able to offer the residents of Sawley and the surrounding neighbourhoods, a pharmacy which is bright and spacious. The pharmacy will be designed to improve the efficiency of prescription dispensing. As patients wish to access the many enhanced services provided within the new pharmacy contract e.g. minor ailment scheme, needle syringe exchange, EHC provision under a PGD etc we feel the requirement to have use of a large consultation room with hand washing facilities is paramount to satisfy the service demanded by patients.
- 1.8 We submit that the availability of pharmaceutical services within this area of Sawley is necessary and desirable. Community pharmacists are often patients' first point of contact, and for some their only contact, with a health professional. This creates a unique opportunity to improve the gateways for sign posting, accessing and providing services and information on health and health issues to a broad spectrum of the population. This includes the most vulnerable in our communities; older people, people with mental health problems, homeless people, travellers and drug mis-users. All of these are people who might have difficulty, for lifestyle reasons in accessing healthcare.
- 1.9 In conclusion we believe that a pharmacy located on Draycott Road in Old Sawley, Long Eaton is necessary and desirable to provide pharmaceutical services. We submit the most beneficial method of providing this service is to grant our contract permission to relocate under a "change of premises" to purpose built pharmacy premises adjacent to the new Gps surgery in the vicinity of Draycott Road.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter from Derby City Primary Care Support Services (on behalf of the PCT) dated 24 September 2009 states:

- 2.1 Derbyshire County PCT has now considered the above application and subsequent representations and has decided to reject your application as being neither necessary or desirable in order to provide adequate pharmaceutical services within the neighbourhood outlined by the Panel. A copy of the Control of Entry Panel minutes is attached.
- 2.2 This was a full application under Regulation 5(1)(a) and is subject to Regulation 12 (necessary and desirable test). Fitness to practice had been carried out previously.
- 2.3 Summary of Application:
- 2.3.1 Name of Applicant: W R Evans (Chemist) Limited
- 2.3.2 Location of proposed premises: 465 Tamworth Road, Long Eaton.
- 2.3.3 Definition of Neighbourhood: The applicant has defined the neighbourhood for this application to be Sawley within Long Eaton.
- 2.4 Background: The application has been submitted under this regulation as it does not, in the applicant's opinion, meet the criteria for a minor relocation over 500m. This application concerns a new pharmacy to be built alongside the the relocation of a doctors' branch surgery into which they would move their existing pharmacy at Tamworth Road, Sawley i.e. a major relocation with a closure. The applicant believes the existing provision of pharmaceutical services within Sawley is already adequate to meet the needs of the population. A 'change of premises' or 'major relocation' will offer patients improved access to full pharmaceutical services, once the surgery relocates. The existing pharmacy provides all advanced services and enhanced services which are commissioned by DCPCT however; the layout is constrained by the size and layout of this old building. There is also limited parking which restricts access to the existing pharmaceutical service.

- 2.5 An application for this neighbourhood was considered in August 2008 and was rejected as neither necessary nor desirable.
- 2.6 Necessary or desirable: The applicant believes that a pharmacy located on Draycott Road, in Old Sawley, Long Eaton is necessary and desirable to provide pharmaceutical services. They submit the most beneficial method of providing this service is to grant them contract permission to relocate under a 'change of premises' to purpose built pharmacy premises adjacent to the new OP surgery in the vicinity of Draycott Road.

Consideration of application and information provided:

- 2.7 JP stated that the relocation of the OP practice had not been approved as yet by the PCT. There are difficulties with the current site of the OP practice as they will be evicted from their premises next August but, this does not mean that this application is the solution to that problem as it has not been looked at as yet and therefore cannot be considered as definitely happening when reviewing this application.

Summary of Representations

Derbyshire LPC — made the following comments:

- 2.8 The LPC notes that this is an application under Regulation 5(1)(b)(ii) and as such fails to be considered under Regulation 12 (necessary and desirable).
- 2.9 The applicant defines the relevant neighbourhood as Sawley within Long Eaton. The PCT recognises that this neighbourhood is the same neighbourhood in which the applicant's existing pharmacy in Tamworth Road is situated. The LPC therefore agrees that the relevant neighbourhood for this application is as described by the applicant.
- 2.10 The applicant states that the existing provision of pharmaceutical services within Sawley is already adequate to meet the needs of the population. This concurs with the POT's previously stated view and effectively argues against the applicants own application.

Derbyshire LMC - made the following comments:

- 2.11 The LMC supports this pharmacy application for relocation from Tamworth Road, Long Eaton to purpose built pharmacy adjacent to the new GPs surgery in the vicinity of Draycott Road.

Boots the Chemist — made the following comments:

- 2.12 Neither support or oppose the application.
- 2.13 May wish to make further representations at a later stage and attend any oral hearing and, if it proves that our interests are adversely affected, appeal against a decision to grant the application.

Jaysons Pharmacy — made the following comments:

- 2.14 The neighbourhood would be defined as the Sawley ward as in the M N Kolia case and considered by the Appeals Unit on 29 Aug 2009. The applicants themselves in the same case used a much wider definition of the neighbourhood.

- 2.15 Since within the neighbourhood by the applicants own admission is adequate it is not felt that the application is necessary or desirable and should therefore be rejected.

W R Evans (Chemist) Limited (letter) made the following comments

- 2.16 Reiterated they are proposing under the application to relocate the existing contract from Tamworth Road to the vicinity of Draycott Road, Old Sawley, Long Eaton. The relocation would enable the pharmacy to offer community pharmaceutical services from future proof, purpose built premises within the new doctors' surgery. The relocation of the pharmacy would not increase the total number of pharmacies trading in either Sawley or Long Eaton.
- 2.17 Objectors fail to see that the new GP surgery will alter the neighbourhood requirements for community pharmaceutical services leading to an inadequacy of the existing pharmaceutical provision. The number of patients accessing healthcare services will dramatically shift from the small parade of shops along Tamworth Road to a much larger number of patients accessing the healthcare services provided in the vicinity of Draycott Road.
- 2.18 In order to overcome the future inadequacy of pharmaceutical provisions the preliminary 'change of premises' application must be granted to meet the changing needs of the Sawley population.
- 2.19 This relocation application fully meets the requirements of the regulations in that it is both necessary and desirable to grant this application in order to enhance and improve the accessibility of community pharmaceutical services to the larger population visiting the new local health service provision on Draycott Road, Sawley.

Discussions on representations

- 2.20 KL stated that she had been confused regarding the application for 'change of premises' and as there was nothing in the Regulations regarding this, she assumed it was a minor relocation, and, that was the bases of the LMC response. Also they had not been aware that the new GP premises had not been approved at the time of writing in support of the application.
- 2.21 GA noted that there was no disagreement as to what is being described as the neighbourhood, however this is an application under the necessary and desirable for a new contract, therefore, the test is that of adequacy.
- 2.22 MM if the application is turned down due to adequacy then they are protected from another pharmacy coming in. Subsequently he may put in a minor relocation over 500 metres.
- 2.23 JP stated that W R Evans' second letter seemed to be arguing against their original letter in that the neighbourhood would potentially change if they were to relocate and then it could be argued that adequacy would change. It is not understood how the number of patients would change even if the GP practice moved it would still cover the same area and population. MM noted that the criterion for minor relocation, either under or over, is that the same population is served.
- 2.24 GA noted that they may be alluding to a situation that the appeals authority decided in a Dronfield application that when a surgery moves it creates a demand and needs a new contract. TM noted that the physical barriers in this case would not change therefore the population would remain the same.
- 2.25 MM noted that Sawley was a separate neighbourhood to Long Eaton given the barrier between the two was a railway line only crossed by Tamworth Road.

Control of Entry Panel's Decision:

- 2.26 Further discussion was held on the application and it was agreed by the Panel not to grant the application for the following reasons:
- 2.27 Neighbourhood — the panel saw no reason to change the neighbourhood and even if the GP surgery did move the neighbourhood would not change given the physical barriers separating Sawley and Long Eaton.
- 2.28 Necessary and Desirable - current services are wholly adequate to meet plans that are currently agreed with the POT.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 5 October 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

Neighbourhood

- 3.1 Our neighbourhood for this application is Sawley, Long Eaton. Our neighbourhood is as determined by the NHSLA in appeal decision N (a)11771. As the M1 motorway to the west, the railway line to the north and east with the River Trent to the south. This neighbourhood is not disputed.

Existing medical services

- 3.2 A branch surgery of The Moir Medical Centre operates at 165 Wilmot Street, Sawley this is an area of predominately social housing with a high percentage of elderly and those on low income. In an assessment made by the then Erewash PCT in 2006 these premises were declared to be "unfit to use as a medical facility." The current lease on the premises at 165 Wilmot Street, Sawley from Erewash Borough Council is due to expire in August 2010.

Pharmaceutical services

- 3.3 In this application we are proposing to change the premises of our existing pharmaceutical contract from 465 Tamworth Road, Long Eaton to the vicinity of Draycott Road, Old Sawley, Long Eaton. This relocation will enable our new pharmacy to offer community pharmaceutical services from future proof, purpose built premises. These premises will either be within the proposed new doctors' surgery or as a separate build with improved patients' car parking should the Medical Centre development not be funded. The relocation of our pharmacy would not increase the total number of pharmacies trading in either Sawley or Long Eaton. Long Eaton town centre now has three 100 hour exempt pharmacies and a number of other pharmaceutical contractors close by.

Referring to the Derbyshire County PCT Control of Entry panel meeting held on 25 August 2009:-

- 3.4 It is pure speculation whether the move could be considered a "minor relocation > 500m" or not. WR Evans (Chemist) Ltd is applying for a preliminary change of premises due to the lengthy nature of the local authority planning process that needs to be undertaken, and the potential for the Pharmaceutical Services Regulations 2005 to be amended from April 2010.
- 3.5 At no stage during the application has WR Evans (Chemist) Ltd expressed an opinion as to whether this move would be considered a minor relocation but for the record we

would consider that it does meet the current criteria. In any event a minor relocation application is only valid for 6 months.

- 3.6 It is irrelevant to the application as to whether the proposed new medical practice will relocate to the same site.
- 3.7 The application was based on a previous FHSAA preliminary ‘Change of Premises’ application SH11 5000 considered in March 2009. The LPC in their representation show a disappointing lack of understanding of the regulations and the nature of the application and the “Change of Premises” approach, we feel this input has unfairly influenced Derbyshire County PCT in making their decision.
- 3.8 This application is for conditional consent to open as allowed by the regulations, i.e. conditional on the closing of the existing pharmacy. It therefore follows that if the PCT believe the neighbourhood to require a pharmacy, they should have granted our application at the location specified in the application as this would have been necessary to secure the adequacy of pharmaceutical services in a neighbourhood that in effect would be without a pharmacy.
- 3.9 It is WR Evans (Chemist) Ltd that has the right to occupy the proposed site, and may consider locating there irrespective of the intentions of the medical practice, as it meets our business needs, the changing needs of our patients and is equally (if not more) accessible to patients currently using the medical centre in Sawley and to the population of the neighbourhood who may be resident or find themselves in the neighbourhood at any given time.
- 3.10 This “Change of Premises” application will lead to a more rational distribution of pharmaceutical services within Sawley and is therefore expedient.

Conclusion

- 3.11 For the above reasons we firmly believe the PCT erred in their decision and we respectfully ask the FHSAA to uphold our 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.

Derbyshire Local Pharmaceutical Committee

- 4.1 The committee agrees that neither the neighbourhood nor existing medical services provision are disputed. However, contrary to the suggestion contained in page 2 (paragraph 3) of the appellants letter, the LPC does not believe the PCT was in any way unfairly influenced by LPC’s representation on this occasion (or on any other occasion) and we are confident that the PCT’s officers who took the decision will confirm this.
- 4.2 The appellants state that their application was based on a previous FHSAA preliminary “Change of Premises” application, SHN1 5000. The LPC believes that this example is not a comparable application to the one which is the subject of this appeal, for the following reasons:
- 4.3 The compact neighbourhood of Sawley within Long Eaton is entirely different to the neighbourhood in SHA 5000, which comprises the whole of the seaside town of Bridlington with a population of 40,000— rising significantly in summer months with an influx of seasonal visitors. Unlike Sawley, Bridlington also experiences a large number of temporary residents, older people retiring to the area and younger people

looking for seasonal work all of which impact on the need for healthcare service provision

- 4.4 The 'Change of Premises' application in SHAI 5000 relates to the introduction of a new extended hours 'Oarzi' GP-led Health Centre based on a large hospital site, which would impact on access requirements for pharmaceutical services in that location whereas the appellant's application relates to a relocation of their existing pharmacy a relatively short distance to land where an existing GP surgery may or may not relocate by a similarly short distance. Therefore, the LPC does not concur with the applicant's view (stated in their letter to the PCT dated 31 July 2009) that "the new OP surgery will alter the neighbourhood requirements for community pharmaceutical services leading to an inadequacy of existing pharmaceutical provision" or that "the number of patients accessing healthcare services will dramatically shift'. Moreover, it was the PCT's senior officer, not the LPC, who observed (as set out in the PCT's decision statement) that "W R Evans second letter seemed to be arguing against their original letter in that the neighbourhood would considerably change if they were to relocate and then it could be argued that adequacy would change. It is not understood how the number of patients would change; even if the OP practice moved it would still cover the same area and population".
- 4.5 In making its original representation, the LPC checked the views it expressed by reference to a minor relocation contained in SHA 3828 (September 2007), because of the similarity in circumstances (relocation of GP surgery and pharmacy) and neighbourhood (small neighbourhood in a suburb of a town). In this example, an appeal against Derbyshire County PCT's decision to grant a minor relocation was dismissed.
- 4.6 In making its representations, the LPC did not take into consideration any aspect of local authority planning processes; neither did it consider any future potential for amendment of the National Health Service (Pharmaceutical Services) Regulations 2005. It remains the LPC's view that the PCT was correct in refusing to grant this application.

Derby City Primary Care Trust

- 4.7 The Primary Care Trust has looked all the information that was available to them at the time of the Control of Entry meeting and it has nothing to add to the decision made at that time. The new OP premises are not yet approved and if they are, then an application for a minor relocation over 500 m would be more appropriate.
- 4.8 There's an addition to the number of pharmacies — Asda Stores opened their 100 hour pharmacy at Midland Street, Long Eaton on 2.11.09. It is next to (2) and (9) on the map.

5 Further Comments

W R Evans (Chemist) Ltd (Applicant/Appellant)

- 5.1 WR Evans (Chemist) Ltd t/a Manor Pharmacy wishes to clarify a point made in the representations from interested parties enclosed within a letter dated 4 December 2009.
- 5.2 WR Evans (Chemist) Ltd only cited the previous Litigation Authority decision SHA 5000 to clarify the point that a preliminary consent application is possible for a Change of Premises within the existing Pharmaceutical Regulations.
- 5.3 It was implicit in both the PCI minutes and the Derbyshire LPCs deliberations that neither party was aware that this type of application is an option within the existing NHS Pharmaceutical Regulations.

- 5.4 At no point in our evidence did we draw any similarities between the Bridlington application and this application.

Derby City Primary Care Support Services (on behalf of the PCT)

- 5.5 Derbyshire County PCT yesterday approved the funding for the development of a new branch surgery for the Moir Medical Centre in Sawley, Long Eaton. This effects the decision made by the Control of Entry Panel in the above case which was rejected on the grounds that such a decision had not yet been made.
- 5.6 Although the Control of Entry Panel feels that a minor relocation over 500m would meet the case, it accepts the applicant's premise that the timescales under the Regulations make a major relocation with a closure a better option in this situation.

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 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 expedient test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 6.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 6.6 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the absence of the applicant's existing pharmacy within that neighbourhood with the provision of pharmaceutical services outside the neighbourhood, 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 not currently secured to the extent that it was at least expedient to grant the application.

7 Decision

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

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Ms L Ferguson, W R Evans (Chemist) Ltd – Applicant/Appellant
Mrs K Lockton – Boots UK Ltd
Mr G Archer – Derbyshire LPC
Ms M Macaulay – Derby City PCSS (on behalf of the PCT)