

8<sup>th</sup> December 2009

**REF: SHA/15343**

**APPEAL AGAINST SHROPSHIRE COUNTY PCT DECISION TO REFUSE AN APPLICATION BY MR STEPHEN RHODES FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF THE JUNCTION OF 50 CARLTON CLOSE, SHREWSBURY**

**REF: SHA/15358**

**APPEAL AGAINST SHROPSHIRE COUNTY PCT DECISION TO REFUSE AN APPLICATION BY BOOTS UK LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF BICTON HEATH SHOPPING CENTRE, WELSHPOOL ROAD, SHREWSBURY**

**REF: SHA/15359**

**APPEAL AGAINST SHROPSHIRE COUNTY PCT DECISION TO GRANT AN APPLICATION BY DUDLEY TAYLOR PHARMACIES LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT UNIT 2, BICTON HEATH SHOPPING CENTRE, WELSHPOOL ROAD, SHREWSBURY**

## **1 The Application**

By application dated 9<sup>th</sup> March 2009, Mr Stephen Rhodes applied to Shropshire County Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of the junction of 50 Carlton Close, Shrewsbury. In support of the application it was stated:

### Neighbourhood

- 1.1 The neighbourhood of Gains Park has been outlined on the attached street plan and Google aerial plan. This neighbourhood is bounded on three sides (North, West and South) by open countryside and on its Eastern side by open land and the Shropshire Hospital site. This residential area is physically removed, and thus distinct, from other residential neighbourhoods. Socially the neighbourhood is also distinct, and largely self sufficient, being served by two dedicated shopping areas: Bicton-Heath to the North which includes, amongst others, a substantial Co-op supermarket and the Pensfold shopping centre in the heart of the neighbourhood with its own supermarket and post-office. The neighbourhood also includes the Oxon C of E primary school, a community centre, two nursing homes and a large medical centre with more than 10,000 registered patients.

### Adequacy

- 1.2 A new contract was granted to Assura for this neighbourhood by the NHS Litigation Authority in July 2008. This service has never materialised and the inadequacy remains. This neighbourhood still has no provision of pharmacy services despite having a substantial reliant population along with a large medical centre which generates further demand for services. Although there is an Alliance pharmacy in an adjacent neighbourhood Mr Rhodes submits that this does not secure adequate provision in the neighbourhood he has outlined. The return journey that a patient is required to make from the closest part of the neighbourhood is more than 2km. Those resident in the north of the neighbourhood have a journey of more than 5km. This

journey is not reasonably practicable on foot and there are no direct public transport links.

- 1.3 As well as being a significant distance for many residents, the Alliance pharmacy does not open over the lunchtime period and is also closed on Saturday afternoon. In addition, it opens half an hour after the Mytton-Oak medical centre opens in the morning and closes half an hour before it closes in the evening. For patients collecting prescriptions from this surgery the opening hours of the Alliance pharmacy do not provide full coverage.
- 1.4 A pharmacy in the location proposed, close to the Pensfold shopping area, would address both the geographical problems of access and the service problems related to opening hours.

By application dated 17<sup>th</sup> March 2009, Boots UK Ltd applied to Shropshire County Primary Care Trust for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of Bicton Heath Shopping Centre, Welshpool Road, Shrewsbury. In support of the application it was stated:

- 1.5 A previous application submitted by Assura Pharmacy for preliminary consent at this location was granted at appeal 10<sup>th</sup> July 2008.
- 1.6 The application was considered by the panel of the NHSLA to be desirable to secure the adequate provision of services particularly to those patients living in the north of the neighbourhood. Consideration was also given to the pharmaceutical needs of people visiting this area of the neighbourhood, notably those visiting the shopping centre, users of the Park & Ride facility and patients working in the nearby business park.
- 1.7 Boots considered their proposed opening hours to best meet the needs of the reliant population.

By application dated 19<sup>th</sup> March 2009, Dudley Taylor Pharmacies Ltd applied to Shropshire County Primary Care Trust for inclusion in the pharmaceutical list at Unit 2 Bicton Heath Shopping Centre, Welshpool Road, Shrewsbury. In support of the application it was stated:

- 1.8 An application for a pharmacy at the same location was made by Assura Pharmacy Ltd and this was granted on Appeal on 10<sup>th</sup> July 2008. Assura Pharmacy Ltd has not yet opened a pharmacy at the Bicton Heath Shopping Centre and that since it has clearly been demonstrated that a further pharmacy contract at that location is necessary and desirable, then this application should be granted.
- 1.9 Whilst Dudley Taylor are aware there have been other applications for a minor relocation by Boots Plc, or new contracts by Assura and Mr SC Rhodes in Gains Park, this application is not for preliminary consent for but full consent as Dudley Taylor already have agreement for lease of the premises with the landlord and that they would be able to open at the earliest opportunity.
- 1.10 When discussing the application the Appeal Authority determined the neighbourhood to be similar to that on the attached plan. They did possibly include more of the hospital grounds, although they did state this made no difference to their consideration.
- 1.11 Dudley Taylor's ground floor premises are ideally located as they are easily accessible to all members of the community. They are adjacent to other shops and provide are particularly well located (*sic*) for the residents living in the Northern part of the neighbourhood for which the appeal authority had particular concern.

The PCT considered and decided to refuse the applications by Mr S Rhodes and Boots UK Ltd and grant the application by Dudley Taylor Pharmacies Ltd. The decision report dated 3<sup>rd</sup> August 2009 states:

#### Consideration

- 2.1 The Committee determined that the neighbourhood in relation to the applications should be as previously defined by the NHS Litigation Authority in July 2008 (REF: SHA/14255).
- 2.2 The Committee noted that there is currently no provider of pharmaceutical services within the neighbourhood defined. The nearest pharmacy is Your Local Boots Pharmacy which is situated on the Mytton Oak Road. The other nearest pharmacies are within Shrewsbury Town Centre, Radbrook Green Shopping Centre or within the large supermarkets which are not realistically accessible without transport. Whereas it is not deemed necessary to have a pharmacy within the defined neighbourhood an additional pharmacy within the area would provide reasonable choice to the residents which would be desirable. There is also a GP Practice within the neighbourhood.

#### Applicant (1) Assura Pharmacy Ltd.

- 2.3 The application presented with the required 40 contractual hours, 9am - 1pm, 2pm - 5.30pm Monday, Tuesday, Thursday, Friday. 9am - 1pm, 2pm - 5pm Wednesday and 9am - 12pm Saturday.
- 2.4 The proposed opening hours (supplementary) are 8.30am - 6.30pm Monday to Friday and 9am - 1pm Saturday.
- 2.5 Satisfactory Fitness to Practice checks have been completed on the Superintendent Pharmacist.
- 2.6 The applicant noted in the application that they intend to provide all Essential, Advanced and Local Enhanced services as required.
- 2.7 Additional information from the applicant states that following the Appeal Authority's most recent decision found that a pharmacy in the neighbourhood is desirable and the PCT should consider where in the neighbourhood the greatest demand for pharmacy services is likely to be. The applicant states that with a single source of prescriptions in the neighbourhood (the surgery site) will be the area of the greatest demand for pharmacy services and so a pharmacy at this location would be the most beneficial to the local population.
- 2.8 The applicant also referred to the previously granted full consent application at Mytton Oak Surgery by the PCT which was surrendered by the applicant when it transpired that the PCT had not followed correct procedures in granting the full consent application.

#### Applicant (2) SC Rhodes.

- 2.9 The application presented with the required 40 contractual hours, 9am - 1pm, 2pm - 5.30pm Monday to Friday. 9am - 11.30am Saturday.
- 2.10 The proposed opening hours (supplementary) are 8am - 7pm Monday to Friday and 8.30am to 5pm on Saturday.
- 2.11 Satisfactory Fitness to Practice checks have been completed on the Superintendent Pharmacist named in the application.

- 2.12 The applicant noted in the application that they intend to provide all Essential, Advance and Local Enhanced services as required.
- 2.13 Additional information from the applicant states that their location would offer easy and equitable access to all residents in the neighbourhood with easy access by car or on foot. The applicant states that the applications at Bicton Heath Shopping Centre would require residents to unnecessarily cross the very busy Welshpool Road which has been the site of several serious road accidents.

Applicant (3) Boots UK Ltd.

- 2.14 The application presented with the required 40 contractual hours, 9am - 1pm, 3pm - 6pm Monday, Tuesday. 9am - 1pm, 2.30pm - 6pm Wednesday, Thursday, Friday. 9am - 12pm Saturday.
- 2.15 The proposed opening hours (supplementary) are 8.30am - 7pm Monday - Saturday.
- 2.16 Satisfactory Fitness to Practice checks have been completed on the Superintendent Pharmacist named in the application.
- 2.17 The applicant noted in the application that they intend to provide all essential, advance and local enhanced services as required.
- 2.18 Additional information from the applicant states that their application was received before the application submitted by Dudley Taylor Pharmacies. The applicant also reiterated that their proposed opening hours are until 7pm and their proposed core hours are until 6pm Monday to Friday.

Applicant (4) Dudley Taylor Pharmacies Ltd.

- 2.19 The application presented with the required 40 contractual hours, 9am – 1pm, 2pm - 5.30pm Monday-Friday, 9.30am-12pm Saturday.
- 2.20 The proposed opening hours (supplementary) are 8.30am - 7pm Monday - Friday, 8.30am - 5.30pm Saturday.
- 2.21 Satisfactory Fitness to Practice checks have been completed on the Superintendent Pharmacist named in the application.
- 2.22 The applicant noted in the application that they intend to provide all Essential, Advance and Local Enhanced services as required.
- 2.23 Additional information from the applicant states that even though the application from SC Rhodes is more central to the neighbourhood it does locate the applicant's pharmacy close to the existing pharmacy on Mytton Oak Road. The applicant states that Bicton Heath Shopping Centre is a primary retail centre also serving rural areas South West of Shrewsbury.
- 2.24 The applicant states that the order in which the applications are received is irrelevant as they were all received at approximately the same time and the PCT has the right to consider the applications together.
- 2.25 The applicant further states that they have an exclusive legally binding agreement with the landlord for their premises.

Decision

- 2.26 Following consideration, the Committee concluded that there was not adequate provision of pharmaceutical services within the neighbourhood because there was no

provider of pharmaceutical services within the area. However, there is a pharmacy on Mytton Oak Road. The PCT was mindful of previous decisions made where additional pharmaceutical services were deemed as not necessary or desirable but made reference to the new neighbourhood as previously defined by the NHS Litigation Authority. The recipients of pharmaceutical services did not have reasonable access to choice of service provider and an application to provide pharmaceutical services within the northern end of the neighbourhood is considered as desirable. However, it was of the decision of the Committee that it was only necessary to grant one application.

- 2.27 The Committee decided that that it was not necessary to hold an oral hearing to consider the applications and would be able to reach a decision on the written evidence provided.
- 2.28 The Committee was mindful that when considering multiple applications the determination should not be made simply on the grounds that one particular application was received before another. It should be made on the basis that the range and quality of services specified in the application in question is to be preferred. The Committee reviewed its decision making process and took into consideration a point scoring exercise for each application. The Committee considered that all four applicants were not equal and therefore discounted the order in which the applications were received.
- 2.29 The criteria used to rate the applications include access, premises, pharmaceutical needs assessment and the nature of the application (full or preliminary).
- 2.30 The Committee rated each application under each criteria to determine the merit of each application and considered the representations received for each application.
- 2.31 The Committee concluded that the application from Dudley Taylor Pharmacies Limited should be granted because access to the services was good. The application was a full application and premises from which the services are to be provided had been secured, meeting the needs of the PNA.

### 3 The Appeals

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 25<sup>th</sup> August 2009, Mr S Rhodes appealed against the PCT's decision to refuse his application. The grounds of appeal are:

- 3.1 Mr Rhodes wishes to appeal against the decision to refuse the above application on the following grounds:
- 3.2 Accessibility: Mr Rhodes feels that in its eagerness to serve those residents in the north of the neighbourhood, the Committee has discounted the needs of those residents in the centre, west and south west who would still be well over 1 kilometre away from the nearest pharmacy. Mr Rhodes' location (as well as being accessible to the north), places more of the population close to a pharmacy than any other location.
- 3.3 Premises: The Committee gave weight to Dudley Taylor's promise that they have secured premises. However in its report the Committee did not mention that SC Rhodes has secured premises in the Pensfold Shopping Centre at the heart of the neighbourhood. A copy of the relevant agreement has been supplied. Mr Rhodes feels that the Committee should have taken the fact that SC Rhodes has secured premises into account, especially since this location is less than 500m from the site of the application. Therefore, if Mr Rhodes' application is granted, he could offer services as soon as an exempt application for relocation has been processed by the PCT (i.e. within 30 days).

- 3.4 Therefore Mr Rhodes contends that there are strong arguments to support his appeal.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 4<sup>th</sup> September 2009, Boots UK Ltd appealed against the PCT’s decision to refuse their application and grant an application by Dudley Taylor Pharmacies Ltd. The grounds of appeal are:

- 3.5 Boots UK Limited wish to appeal against the recent decision of Shropshire County PCT to refuse our application for preliminary consent at Bicton Heath Shopping Centre, Welshpool Road, Shrewsbury. Boots also wish to appeal against the PCTs decision to approve the application from Dudley Taylor Pharmacies Ltd for the same location.
- 3.6 The PCT have recently considered four applications for this area of Shrewsbury together and in relation to one another. Boots submit that the PCT were correct in their decision to concur with previous appeal decisions and approve an application for inclusion at Bicton Heath Shopping Centre to secure the adequate provision of pharmaceutical services in the area.
- 3.7 However Boots believe that as the PCT received their application before that of Dudley Taylor Pharmacies and as Boots propose to offer core hours of service until later in the evening and extended opening hours on Saturday, the PCT should have granted Boots’ application in preference to that of Dudley Taylor Pharmacies.
- 3.8 In conclusion, Boots submit that their application would better meet the needs of the local population and respectfully urge the Appeal Authority to uphold their appeals accordingly.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 8<sup>th</sup> September 2009, Sainsbury’s Supermarkets Ltd appealed against the PCT’s decision to grant an application by Dudley Taylor Pharmacies Ltd. The grounds of appeal are:

- 3.9 An application for the same locality was refused at Appeal in July 2008 as being neither necessary nor desirable.
- 3.10 Nothing has materially changed in the locality in terms of access to existing services that would warrant a change to this decision.
- 3.11 No evidence was put forward by the Applicant or the PCT to suggest that those residing in the neighbourhood lacked adequate access to services.
- 3.12 The main reason for granting the application seemingly is centred on the issue of choice. With respect, this application offers nothing new either in terms of hours or services that are already being provided by existing contractors from outside the area.
- 3.13 In summary, for the reasons given above Sainsbury’s respectfully request that the Litigation Authority uphold this appeal.

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

This is a summary of representations received on the appeals. 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 appeals.

##### 4.1 SHROPSHIRE COUNTY PCT

- 4.1.1 SHA/14343 Premises: Mr Rhodes originally submitted a Preliminary Consent application in the vicinity of the junction of 50 Carlton Close, Shrewsbury. Following the consultation period Mr Rhodes was given the opportunity to submit further comments in relation to his application. Mr Rhodes then submitted further comments including a lease agreement relating to premises at Pensfold Shopping Centre, a different location from the application. He was then informed that the PCT was required to determine the Preliminary application which, by its very nature doesn't need to have a fixed address. Once approved the applicant should then submit their full application including the lease agreement with the relevant fee. The PCT would then determine the full application under regulation 41 and decide whether the confirmed address is within the location of the preliminary application. Mr Rhodes was also given the opportunity to withdraw his original preliminary consent application and submit a full application including the lease agreement, but confirmed that he would like to proceed with his original preliminary application. Consequently the lease agreement for Pensfold shopping centre was not taken into account when considering this application.
  - 4.1.2 SHA/15358: The PCT was mindful that when considering multiple applications the determination should not be made simply on the grounds that one particular application was received before another. Instead, the decision should be made by comparing the range and quality of services specified in the applications and only consider the order of receipt of the applications if all other factors are equal. The PCT scored all the applications against a number of criteria and determined that all four applicants were not equal and therefore, discounted the order in which the applications were received. The PCT was aware that the core hours offered by Boots UK Ltd were extended at the end of each day, over that offered by Dudley Taylor, although the time period excluded from the core hours around mid-day was increased. Taking all factors into account Dudley Taylor's application scored higher overall.
  - 4.1.3 SHA/15359: The PCT wishes to point out that an application for the same locality was granted on appeal in July 2008 (REF: SHA/14255)
- 4.2 BOOTS UK LTD – comments on the appeal by Mr S Rhodes (SHA/15343)
- 4.2.1 Boots agree with the PCT decision to reject the application and their reasoning.
  - 4.2.2 The PCT have recently considered four applications for this area of Shrewsbury together and in relation to one another. Boots submit that the PCT were correct in their decision to concur with previous appeal decisions and approve an application for inclusion at Bicton Heath Shopping Centre to secure the adequate provision of pharmaceutical services in the area.
  - 4.2.3 When considering the previous application submitted by Assura Pharmacy Ltd for Bicton Heath Shopping Centre (NHSLA Case reference 14255). The panel considered whether granting the Assura application would secure adequacy within the neighbourhood concluding that a pharmacy at the northern end of the neighbourhood would secure adequacy. The panel had regard to the less affluent population to the north of the neighbourhood as well as workers at the nearby Business Park and visitors to the Park & Ride facility. The application was duly approved as desirable.
  - 4.2.4 Following this decision, the Appeals Authority subsequently dismissed an appeal for consent at premises in Pensfold Shopping Centre (NHSLA Case Reference SHA/14780). The decision document stated that access generally

has been previously considered to the proposed Assure premises (Bicton Heath Shopping Centre) and in particular to the Alliance Pharmacy.

- 4.2.5 The appellant in this case has not provided any evidence to suggest that a further pharmacy contract is required to secure the adequacy of services in the neighbourhood.
- 4.2.6 Bicton Heath Shopping Centre is a pleasant, modern development consisting of a number of units including a Co-Op supermarket catering for the weekly shopper as well as those seeking daily items such as a newspaper. The Pensfold Shopping Centre offer consists of only a small number of units with the businesses located there offering only a limited range of products. Given the limited facilities and the general environment, Boots would suggest that Pensfold Shopping Centre is not a particularly appealing place to shop when compared with Bicton Heath or the stores located at the shopping centre located on Mytton Oak Road.
- 4.2.7 Furthermore, the appellant has provided not evidence to suggest that residents in the centre, west and southwest experience any difficulties when wishing to access the existing pharmaceutical services. Evidence provided previously indicated a high level of car ownership in the neighbourhood with 83% of households having access to a private vehicle, with lower levels of vehicle ownership amongst residents of the bungalows and starter homes in the far north of the neighbourhood. Public transport is particularly convenient for those living to the west of the neighbourhood, with bus services that running every 12 minutes along Gains Park Way and Gains Avenue.
- 4.2.8 With regards to the appellant's comments on premises Boots believe that the PCT were correct to consider the evidence before them at the time and that was relevant to the location within the original application.
- 4.2.9 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.
- 4.3 DUDLEY TAYLOR PHARMACIES LTD – comments on the appeal by Mr S Rhodes (SHA/15343)

- 4.3.1 Mr Rhodes' grounds for Appeal are based on two issues; accessibility and premises.

#### Accessibility

- 4.3.2 Mr Rhodes feels that the Committee may have discounted the needs of those residents in the centre, west and south west of the neighbourhood. Dudley Taylor are sure these residents were not discounted, but a previous decision by the Appeals Authority for an Application in the South of the neighbourhood to be declined and the one in the North granted, on the basis of the needs of the population to the North of the neighbourhood. It should also be noted that whilst not in the neighbourhood, the residents in the area of Shelton, and to the West outlying areas of Montford bridge, Ford and Bicton Heath, would find access to this Pharmacy very convenient.

#### Premises

- 4.3.3 Whilst Mr Rhodes may have secured premises, the PCT will no doubt have taken into account that use of those premises would be subject to a relocation of this contract and this may have delayed the opening of a pharmacy on this site.

- 4.3.4 For the reasons stated above, Dudley Taylor feel that the Appeal by Mr Rhodes should be rejected.
- 4.4 DUDLEY TAYLOR PHARMACIES LTD – comments on the appeal by Boots (SHA/15358)
- 4.4.1 The Appeal by Boots UK Ltd is based on hours of service and the time the Application was received by the PCT.
- 4.4.2 The PCT is not bound to look at applications in the order in which they are received and will obviously have taken note that Boots have not entered into any agreement for premises on the site of the Application. There could, therefore, be a possibility that if the contract was granted to them, a pharmacy may never actually be opened.
- 4.4.3 The PCT would also have taken into account the issue of opening hours and will have looked at these in relation to the opening hours of medical practices and other Pharmacies in Shrewsbury.
- 4.4.4 For the reasons stated above, Dudley Taylor feel that the Appeal by Boots UK Ltd should be rejected.
- 4.5 DUDLEY TAYLOR PHARMACIES LTD – comments on the appeals by Boots and Sainsbury's (SHA/15359)
- 4.5.1 The only comment Dudley Taylor would make relate to the observations made by Sainsbury's and that is Dudley Taylor believe the application they refer to in the same locality was actually approved in July 2008.
- 4.5.2 Dudley Taylor believe the Appeals made against their Application should be rejected.
- 4.6 SHROPSHIRE LPC
- 4.6.1 The LPC considered these appeals together and in relation to each other - as it did when the initial applications were made.
- 4.6.2 The LPC referred to the appeal decision of SHA/14255 when the appeal committee decided that a Pharmacy in the location of Bicton Heath was desirable (not as mentioned incorrectly in the letter from Sainsbury's).
- 4.6.3 The LPC feel that a Pharmacy in this location, as opposed to Carlton Close, would offer a good geographical distribution of pharmaceutical services in this neighbourhood for residents of the area and also users of Mytton Oak Surgery. This location gives users access to pharmaceutical services to the North of the surgery and the existing Boots Pharmacy on Mytton Oak Road gives service users access to the South.
- 4.6.4 The LPC considered the core hours offered by both applicants at the Bicton Heath site, the proposed opening hours and the services offered. They are very similar. However, the Dudley Taylor application is for full consent with premises secured and if approved would enable access to pharmaceutical services at an earlier date than the Boots application.
- 4.6.5 The LPC therefore feel that these 3 appeals should be dismissed accordingly and the decision made by Shropshire County PCT upheld.

## 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 was mindful of the previous decision in appeal ref. 14255. In respect of Assura's previous grant at Bicton Heath shopping centre, the Committee noted that the circumstances remained the same with the exception in this case that an application had also been received for another location within the neighbourhood. Given the relatively short time since Assura's grant, the Committee accorded weight to that decision which followed a site visit and hearing.
- 5.6 The Committee noted that Mr Rhodes had applied for preliminary consent in the vicinity of the junction of 50 Carlton Close and subsequently provided a lease agreement for premises at the nearby Pensfold Shopping centre. The Committee were content for the purposes of this application to consider Pensfold Shopping Centre as being in the vicinity of Carlton Close. The Committee were mindful however that in the event of a full application being submitted it would be a matter for the PCT to determine whether the apparent change in location was acceptable.
- 5.7 The Committee noted that the neighbourhood had been defined in accordance with that accepted for the previous appeal ref. 14255. The Committee noted that this had not been disputed and were therefore content to accept that neighbourhood for the purpose of determining these applications.
- 5.8 The Committee noted that there are no pharmacies within the neighbourhood and that the application granted to Assura Pharmacy in July 2008 had not opened. The Committee further noted the location of the nearest pharmacy outside the neighbourhood on Mytton Oak Road. The Committee were mindful of the access difficulties raised in the site visit reports for the previous appeal, specifically the distance to the nearest pharmacies for those residents in the less affluent northern end of the neighbourhood.
- 5.9 The Committee reminded itself that with no pharmacy within the neighbourhood there was no choice of either provider or services for the reliant population.
- 5.10 The Committee were of the view that the above issues remain in considering the instant applications and concluded that a gap in provision remains such that it is desirable to grant an application.
- 5.11 The Committee noted Boots' comment that they were the first to apply however concurred with the PCT that this factor should be considered only where applications are found to be equal in all other respects.
- 5.12 In considering the services offered by each of the applicants, the Committee noted that all applicants were offering a full range of services.
- 5.13 The Committee had regard to the hours proposed by each applicant, and noted that these were largely similar, with Boots offering longer supplementary hours on Saturdays.

- 5.14 With regard to premises, the Committee noted that Dudley Taylor had secured premises at Bicton Heath and furthermore, had submitted a full application. The Committee noted that Boots had provided no information to suggest that they are in a similar position. The Committee were mindful that this placed Dudley Taylor in a more advanced position to proceed should their application be granted.
- 5.15 The Committee considered the locations of the proposed pharmacies at the Bicton Heath Shopping Centre and the vicinity of the junction of 50 Carlton Close. The Committee noted Mr Rhode's assertion that his proposed site is more centrally located. The Committee however were mindful of the previous site visit and report which highlighted the difficulties in access for those at the northern end of the neighbourhood nearer Bicton Heath. The Committee further noted that the report suggested that those to the south nearby the Pensfold Shopping Centre actually had reasonable access to the existing pharmacy on Mytton Oak Road, by way of high car ownership and good bus services. The Committee placed appropriate weight on this factor in preferring the two applications at Bicton Heath over that of Mr Rhodes.
- 5.16 In the Committee's view, the distinction in hours applied for by Boots by way of supplementary provision was not sufficiently distinct to be accorded significant weight and the Committee had no reason to depart from the PCT's view nor should it substitute a contrary view without good cause. The Committee accepted that the matter of premises having been secured was sufficient to prefer the application by Dudley Taylor Pharmacies Ltd given all other matters were either equal or of such little difference as to be inconsequential.

## 6 Decision

The Committee was of the view that a pharmacy was desirable to secure the adequate provision of services in the neighbourhood. Accordingly the Committee determined:

- 6.1 That the appeal by Mr Rhodes should be dismissed and the application refused (Ref: SHA/15343)
- 6.2 That the appeal by Boots UK Ltd should be dismissed and the application refused (Ref: SHA/15358)
- 6.3 That the appeals by Boots UK Ltd and Sainsbury's Supermarkets Ltd should be dismissed and the application by Dudley Taylor Pharmacies Ltd be granted (Ref: SHA/15359).

### **Abby Richards Appeal Officer**

A copy of this decision is being sent to:

Shropshire County PCT  
Dudley Taylor Pharmacies Ltd  
Mr S Rhodes  
Boots UK Ltd  
Sainsbury's Supermarkets Ltd  
Lloyds Pharmacy Ltd  
Shropshire LPC