

REPORT FROM AN ORAL HEARING HELD ON 18 DECEMBER 2009 AT BEVAN HOUSE, GREAT PARK, NEWCASTLE IN CONNECTION WITH AN APPEAL AGAINST NORTH TYNESIDE PCT'S DECISION TO ALLOW STATUSPLACE LTD APPLICATION FOR MINOR RELOCATION OVER 500 METRES FROM 11 COAST ROAD, WALLSEND NE28 9HP TO UNITS 5, 6 OR 12 BATTLE HILL SHOPPING CENTRE, BATTLE HILL, WALLSEND
REF: SHA/15327

1 Background

- 1.1 By application dated 24 April 2009, Statusplace Ltd ("the Applicant") applied to North Tyneside Primary Care Trust ("the PCT") for a minor relocation over 500 metres from 11 Coast Road, Wallsend NE28 9HP to 5, 6 or 12 Battle Hill Shopping Centre, Battle Hill, Wallsend. The application is between pages 1 to 15 of the bundle.
- 1.2 The PCT considered and decided to grant the application because the existing and proposed premises were within the same neighbourhood, the same NHS services would be provided to essentially the same population, the relocation was a short distance of 0.75 miles, there were no barriers preventing the relocated pharmacy from serving the same population as at present and the same services would be provided by the relocated contractor as at present and there would be no interruption to those services.
- 1.3 In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority, dated 24 August 2009, Lloyds Pharmacy Ltd appealed against the PCT's decision. The appeal is between pages 36 and 37 of the bundle.

2 Preliminary Consideration

- 2.1 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. It also had before it the responses to the Authority's own statutory consultations.
- 2.2 On the basis of this information, the Committee considered it was necessary to hold an Oral Hearing, before determining the appeal. The Committee requested the Person Appointed to conduct the oral hearing to recommend with reasons, the most appropriate neighbourhood for the proposed pharmacy, to advise the Committee of the distance between the proposed and existing premises and whether the proposed move is a minor relocation in accordance with the Regulations.
- 2.3 I was appointed and sat at Bevan House, Great Park, Newcastle on 18 December 2009. A list of those present is attached at Appendix 1. On the morning of the hearing, I conducted a site visit. My findings are set out below.

3 Site Visit

- 3.1 The existing pharmacy is located in a parade of shops facing the main A1068 Coast Road. The parade is served by a small service road where there is on-street parking. Located within the area is a post office/convenience store, barbers, fast food outlets, betting shop, double glazing outlet, public house and petrol filling station.
- 3.2 The area is predominantly residential comprising semi detached properties probably built around the 1930s. On the opposite side of the Coast Road are newer properties in addition to the semi detached houses.
- 3.3 The proposed premises are located at the Coast Way Shopping Centre in the centre of Battle Hill. This is a relatively new shopping area with a large Lidl supermarket and

other smaller shops mainly selling food. These include a Tesco Express, Nisa convenience store, Greggs Bakery, a butchers, plus an optician, betting shop and taxi office. There are a few vacant units. A library is located in the same block. Both the Lidl and the shopping parade have their own car parks. A walk-in health centre is nearby with a separate car park. Lloyds Pharmacy is located in a portakabin next to it. Although the times on the door state that it is open 9am to 1pm and 2pm to 6pm Monday to Friday, at the time of the site visit, (about 11am) it was shut.

- 3.4 Across Battle Hill Drive is the former shopping parade with flats above and a few businesses still open but otherwise the units appeared to be boarded up and a nearby block appeared to be either in the process of demolition or in an advanced state of vandalism. Battle Hill is denoted by road signs on the approaches from east and west and appears to comprise a large area of public or former public housing dating in the main from the 1960s. There is also a large college located there.
- 3.5 I walked from the Battle Hill shopping centre to the existing pharmacy and back again taking a different route. The distances were measured by surveyor's wheel.
- 3.6 Walking from the apparently vacant unit next to Greggs' bakery, round past the library and on the footpath to the pavement running alongside the Coast Road to the existing pharmacy was 1222 metres which took 15 minutes to walk at a steady pace. The only crossing of significance was the slip road from Battle Hill Drive onto the Coast Road and the service road between the service station and parade of shops. The walk whilst direct and easy in that the gradient was flat with a wide pavement was extremely unpleasant due to the traffic noise. Coast Road is a dual carriageway and it carries significant amounts of traffic.
- 3.7 On the return journey the route taken was via Battle Hill Drive which was relatively flat but involved crossing side roads, some of which did not have dropped kerbs. The pavements were of reasonable width and lit. The distance was measured as 1280 metres which took 16 minutes to walk at a steady pace.

4 The Hearing

Status Place Ltd (Applicant)

- 4.1 In addition to the matters raised in the application, and comments on the appeal which are between pages 41 and 42 of the bundle, Mr. Randeve and his representative, Mr. Simpson made the following additional comments in oral evidence and in answer to questions.
- 4.2 The Applicant's current pharmacy has been in existence for 5 years and has been built up into a successful business. The neighbourhood defined by the PCT is agreed although it is not considered the current pharmacy serves the residential area to the west of Station Road. This is because Station Road is a barrier to those customers who wish access the existing pharmacy.
- 4.3 The current customer base is as shown on the map submitted at Appendix 2 which was superimposed over the map in the bundle. The dots shown have been plotted over the last month and each represents a patient or family. The majority of the trade is between the two pharmacies as marked. It includes customers who receive collection and delivery services and those who access the pharmacy by car.
- 4.4 Coast Road Pharmacy does not service any particular GP surgery. The residents of the neighbourhood save to the north or east generally access medical services to the south of the Coast Road in Wallsend where the majority of the GPs are located. The current pharmacy is substantially (75%) reliant on collection of prescriptions from the Wallsend surgeries.

- 4.5 The distances are above 500 metres. Given the nature of the way the services are accessed at present, this would not present any undue difficulty. Indeed the services would be more accessible. There is plenty of car parking at the proposed site but not at the current location. Those who access Coast Road Pharmacy by bus would not be inconvenienced as it is only 2 stops between the sites.
- 4.6 Nor would the vast majority of current patients who are on foot be inconvenienced by the move.
- 4.7 The proposed location was intended to be called Battle Hill shopping centre but has been renamed Coast Way shopping centre.
- 4.8 The car ownership is likely to be higher at either end of the proposed neighbourhood. It is not thought there is any cachet to living in any particular part of the area. At one time it could be that Battle Hill was a separate new development and thereafter perceived as rather deprived. But there has been redevelopment of the area with new houses being built.

Lloyds Pharmacy

- 4.9 In addition to the matters raised in the letter of appeal, Mr. Cox made the following additional comments in oral evidence and in answer to questions.
- 4.10 Whilst there is a degree of logic to the neighbourhood as proposed by the PCT, in that the Coast Road and A19 are significant roads in the area, there do however appear to be three separate zones within it. Hadrians Park lies to the north and this is denoted by a sign which then states "you are now entering Hadrians Park". There are also Battle Hill signs. The one to the west is where Baildon Close joins Battle Hill Drive. A council workman near the existing premises was of the opinion that Coast Road Pharmacy is in Wallsend. There are post offices both near the existing premises and at the proposed site.
- 4.11 In terms of housing stock, the area is roughly similar but the output area statistics show that there is higher deprivation in Battle Hill than the area round the current location. For both, however, car ownership is quite low with 37% of households having no car whereas in England it is 27%. In the north of England it is 36%. It would not be correct to argue that all services are accessed by vehicle. There will be a significant number of people accessing services on foot. The test should be judged by those on foot.
- 4.12 The distance was measured at 1,235 metres to the entrance to Lidl car park down Battle Hill Drive. A round trip therefore would be about 2.5 kms which is not an easy distance.
- 4.13 Lloyds Pharmacy is located in the old shopping centre which has been compulsory purchased. It remains open at present but is due to close in January 2010 and there will be a minor relocation into the portakabin which is next to the Darzi style clinic which opened in October 2009. At the end of 5 years there will be a decision as to whether that centre carries on or is redeveloped which explains why it is housed in something of a temporary structure at the moment.

5 Consideration

- 5.1 The applicable regulation is 6(1) of the NHS (Pharmaceutical Services) Regulations 2005 (as amended). I have also had regard to the Department of Health Guidance and the Court of Appeal case of *Suri and Gompels*.
- 5.2 Whilst there did not appear to be any dispute as to the neighbourhood from the written representations, Mr. Cox at the oral hearing thought there were three distinct areas within the area as defined by the PCT.
- 5.3 I noted on the site visit, that Battle Hill was defined on road signs as a distinct area but there was no particular difference in the style of housing either side of the signs or any breaks in development. It is probably the case that Battle Hill was built in the 1960s and would have been a new community then. The houses are also different in age and style from the older housing to the west. I accept that post offices can provide a focus for various communities. Mr. Randeve did say that he thought that Station Road was a barrier to those living to the west which is why he had so few customers from that area. Without someone with local knowledge at the oral hearing, I did not feel I could say with any degree of confidence that the neighbourhood as defined by the PCT was wrong. It has the advantage of having well defined boundaries. I note there is a reference in the PCT papers to this having been previously defined as a neighbourhood although Mr. Chapman from the agency had no further details of this. After a great deal of thought, I concluded for the purposes of this application the neighbourhood should be as defined by the PCT. I accept therefore that both existing and proposed premises are within the same neighbourhood.
- 5.4 The distance between the present and the proposed premises is over 1,200 metres. The walk took me 15 minutes at a steady pace. Mr. Randeve said it took him 12 minutes to walk. I consider someone who was less mobile or walking with small children would take considerably longer than 15 minutes. I am satisfied this could not be described as a short distance and it is certainly a trip which would not be undertaken lightly.
- 5.5 I accept that some of the current users of the existing pharmacy who are on foot, might find it easier to reach in its new location. Some however would find it further away. I am not satisfied however that this has any relevance to the test which is set out in *Suri and Gompels* which approved *the Cumbria* decision.

6 Recommendation

Having taken into account all the evidence on the papers before me, the points made in oral evidence and my own observations on the site visit, I am satisfied the move could not be described as a minor relocation and it is recommended the appeal should be allowed.

J.E. Perrett

