

23rd February 2010

REF: SHA/15560

**APPEAL AGAINST NORTH EAST ESSEX PCT
DECISION TO GRANT AN APPLICATION BY BOOTS
UK LTD FOR MINOR RELOCATION UNDER 500
METRES, FROM 130 OLD ROAD, CLACTON ON SEA
CO15 3AH TO 86 PIER AVENUE, CLACTON ON SEA
CO15 1NJ**

1 The Application

By application dated 29th September 2009, Boots UK Ltd ("the Applicant") applied to North East Essex Primary Care Trust ("the PCT") for minor relocation under 500 metres, from 130 Old Road, Clacton on Sea CO15 3AH to 86 Pier Avenue, Clacton on Sea CO15 1NJ. In support of the application it was stated:

- 1.1 The proposed move is within the same neighbourhood, will serve the same population and there are no barriers preventing access between the two sites. The distance on foot between the two sites is approximately 360 metres.
- 1.2 The opening hours of the existing pharmacy are detailed in Section E of the enclosed form. The core and supplementary hours of the new site will be the same as those at the existing premises. Boots can confirm that they will be providing the same services as at the current site and that there will be no interruption in services.
- 1.3 Boots are currently in the process of producing the documentation for registration RPSGB and will forward the registration number of the new premises as soon as it is available to them. Please be assured that the premises will be registered in advance of opening.
- 1.4 Boots would like to assure the PCT that their pharmacists undertake any training that is necessary to enable them to provide the appropriate advanced and enhanced services. If Boots' application is successful, it is anticipated that the existing pharmacist will transfer to the new pharmacy and the appropriate accreditation details will be provided as required.

Describe the nearest practicable route from the existing to the proposed premises.

- 1.5 Turn left out of current store and proceed along Old Road. Bear Left onto Pier Avenue until you reach No. 86. See attached map.
- 1.6 The move is within the same neighbourhood and there are no barriers to movement between the two locations. The same services will be provided and there will be no interruption to the provision of services.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 16th November 2009 states:

Neighbourhood

- 2.1 It was noted by the Group that there was no existing predetermined neighbourhood in relation to this application that could be evidenced. An official site visit had been undertaken by Family Health Services and members of the Group to look at the area.

The Group then considered whether or not to determine the whole of Clacton as one neighbourhood.

- 2.2 The 2001 Census shows the population of Clacton on Sea to be 53,000 and the Group members considered one neighbourhood to be too large based on the grounds of physical, geographical and social factors and including differences between Bockings Elm and Great Clacton.
- 2.3 The applicant was requested to supply a map defining the proposed neighbourhood in support of their application, which was received prior to this meeting and that was described as follows:-
- 2.4 The seafront in Clacton (Promenade and Marine Parade) forms the southern boundary of the neighbourhood turning north along Jaywick Lane which forms the western boundary. At the junction of the B1027 turning left onto St Johns Road, north along Little Clacton Road and turning east to encompass the whole of the Constable Avenue 'estate'. At the junction of the A133 turn right (south) along the Clacton By-Pass to the roundabout. Turn left (east) along the B1027, south along Oxford Road joining the A133 at Carnarvon Road. Turn south (right) along Carnarvon Road and continue until the road meets the seafront.
- 2.5 After much consideration of the facts before them, the Group agreed the following neighbourhood boundary and agreed to identify it as the Central and West Clacton neighbourhood.
- 2.6 The area now agreed as the Central and West Clacton neighbourhood is made up of the following polling wards (population in brackets)
- 2.6.1 Alton Park (5,182) St James (4,334)
- Peter Bruff (4,695) Pier (4,810)
- Rush Green (4,981)
- 2.7 It was noted that this neighbourhood is currently served by the following GP Practices, none of whom dispense:
- 2.7.1 Dr Sweeney & partners; Dr Faerstrand & partners; Dr Mann & Partners; Dr Mirza & Partners; Chilvers McCrea who have a branch surgery in Nayland Drive.
- 2.8 The Group noted that there are seven pharmacies currently open in the neighbourhood, one of which is a 100hr pharmacy:
- 2.8.1 Boots in Pier Avenue and two in Old Road
- 2.8.2 Lloyds in Jackson Road and Pier Avenue
- 2.8.3 Rowlands in the High Street
- 2.8.4 Prescriptions 2 You in Pier Avenue (100 hour).
- 2.9 The Group then went on to discuss the actual Minor Relocation:
- 2.10 The Group were informed that the new pharmacy was 363 metres from the old pharmacy and noted that the applicant had stated in the application that there would be no interruption of services. It was noted by the Group that the application depicted the same opening hours as current, that being M-F 09:00-12:30 & 13:30-18:00 and 09:00-13:00 on Saturday.

2.11 It was noted that under Pharmacy Regulations 2005 Part 2 Regulation 6 the application met the required criteria as detailed above and therefore Members APPROVED the application for a minor relocation under regulation 6 of the National Health Service (Pharmaceutical Services) Regulations 2005.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 16th December 2009, Lloyds Pharmacy Ltd appealed against the PCT's decision. The grounds of appeal were:

- 3.1 It is Lloyds' submission that this application does not serve the same population. The existing premises serve a distinct population around the retail parade and the proposed site services a different area around the surgery site at 86 Pier Avenue.
- 3.2 The relocation will take the pharmacy across the junction with St. Osyth Road which acts as the divide between the two sites reflecting the different geographical composition. This junction also acts as a neighbourhood boundary between the two sites.
- 3.3 For the above reasons Lloyds do not believe the application meets the criteria for a minor relocation, therefore Lloyds respectfully ask the Appeal Unit to reconsider the application and uphold this appeal.

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 BOOTS UK LTD

- 4.1.1 Boots UK Ltd agrees with both the PCT's decision to grant the above application and their reasoning, and their neighbourhood definition.
- 4.1.2 Maybe the appellant has misunderstood the location of the current and proposed sites, as there is no need to cross St Osyth Road. Boots UK Ltd wish to confirm that there are no barriers to patient access between the two sites - see enclosed map indicating the location of both sites and the route between them.
- 4.1.3 The Boots pharmacy at 130 Old Road dispenses to patients of all local surgeries, living in all areas of Clacton-on-Sea. It is a short, straightforward journey along flat, even pavements, along Old Road which then becomes Pier Road. The proposed site is on the same side of the road as the current site, at a distance of 360 metres when measured by surveyor's wheel.
- 4.1.4 In conclusion, Boots submit that the above application does meet the required criteria for a minor relocation, and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

4.2 NORTH EAST ESSEX PCT

- 4.2.1 The PCT note that the appellant considers that the application does not serve the same population and has made an arbitrary statement regarding St Osyth Road junction acting as a neighbourhood boundary.

4.2.2 The PCT would like to make the following response to these comments:

Same population:

4.2.3 There is no evidence that there is a distinct population served by the retail parade, either the one in Old Road or in Pier Avenue (the appellant does not state which one).

4.2.4 In order to demonstrate this, the PCT have attached evidence (Appendix 1) for prescription flows for the period April 2009 to September 2009 from the 4 main surgeries in the Central Clacton area. From this information it is quite clear that the flow of prescriptions to 130, Old Road and to Lloyds, Pier Avenue is very similar suggesting that both pharmacies already serve a "similar population". Contrarily, the flow of prescriptions to 130 Old Road and 158 Old Road are significantly different, suggesting that the location of Old Road Surgery has a greater influence rather than where the population lives.

Neighbourhood:

4.2.5 When the original application for the Minor Relocation was submitted there was no existing predetermined neighbourhood available that could be evidenced. Consequently, it was necessary to determine the neighbourhood in advance of considering the actual minor relocation.

4.2.6 The Pharmacy Services Group determined that this would comprise the 5 polling wards listed below and would be known as Central and West Clacton:

4.2.6.1 Alton Park

4.2.6.2 Pier

4.2.6.3 St James

4.2.6.4 Peter Bruff

4.2.6.5 Rush Green

4.2.7 This is marked on the attached map in RED (Appendix 2). This coincides with the neighbourhood detailed on the maps sent to the Appeal Unit by FHS on 21st December 2009.

4.2.8 Further detail relating to relocation within the same neighbourhood is shown on the attached Google maps (Appendix 3) and satellite pictures (Appendix 4) for the area, with the following indicated:

4.2.8.1 130 Old Road (existing location)

4.2.8.2 84 Pier Avenue (proposed site of relocation)

4.2.8.3 Lloyds Pier Avenue

4.2.9 It should be noted that there has been no objection to this minor relocation from Rowlands Pharmacy (High Street, Clacton) and Prescription2You, Pier Avenue, both of whom have pharmacies located within the PCT defined neighbourhood.

4.2.10 The PCT, therefore, feel that there are no circumstances which were in existence or have changed since the decision of the Pharmacy Services Group that should prevent this minor relocation from going ahead.

4.3 ESSEX LPC

- 4.3.1 The Committee have reviewed the submissions made for this appeal and the original decision reached by the Pharmacy Services Sub Committee at their meeting on 20th January 2010. The Committee were in full agreement with the decision reached by the PCT.
- 4.3.2 On consideration of this appeal the committee felt that there were no physical barriers between the two locations, and in the committee's opinion St.Osyth Road did not act as a divide between the two sites.
- 4.3.3 The committee considered that the neighbourhood would remain the same as that of the current location and that the population would not be adversely affected by this minor relocation.
- 4.3.4 It was therefore the view of the committee that this appeal should be rejected and the minor relocation granted.

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 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 6(1) and 6(3) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee noted the PCT's decision on this application had been notified with a right of appeal, to Lloyds Pharmacy Ltd. Regulation 29(2) indicates that where the PCT has determined an application to which regulation 6(1) applied, the applicant and any person who has been notified of the decision under regulation 27(1)(a)(ii) or (iii) may appeal to the Secretary of State. Regulation 27(1)(a) includes 'an application to which regulation 6 applies' thereby (in the Committee's view) including regulation 6(3) (minor relocation applications under 500 metres). The Committee proceeded to determine the appeal by Lloyds Pharmacy Ltd.
- 5.6 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.7 The Committee noted the neighbourhood as defined by the PCT on a map which had been circulated to the parties. The Committee noted that the appellant identifies the junction of St Osyth Road with Old Road as a neighbourhood boundary thus disputing the PCT neighbourhood, however they had provided no reasons for this assertion. Given that the PCT neighbourhood appeared to be based on appropriate boundaries, and is otherwise undisputed, the Committee were content to accept that definition for the purposes of this appeal without prejudice to future applications. The Committee noted that the existing and proposed sites are in the same neighbourhood.
- 5.8 The Committee next considered access between the sites and noted the appellant's comment that the junction with St Osyth Road acts as a divide. However the Committee also had regard to the applicant's comments that there is no need to cross St Osyth Road and that the proposed site is on the same side of the road as the existing site along flat even pavements. Given that the appellant had again not provided any reasons for their assertion the Committee saw no information by which to conclude that any barriers exist between the two sites.

- 5.9 The Committee noted the appellant's assertion that the proposed pharmacy would not be serving the same population as the existing site. The Committee accepted that patients of the nearby surgery may find the proposed site more convenient however saw no information to suggest that the population in respect of the existing site, whether patients of the surgery or not, would not find the proposed site as conveniently accessible.
- 5.10 The Committee noted that the provision of services would be continuous and there was no information to suggest that the same services would not be provided at the proposed site.

6 **Decision**

The Committee was of the view that the proposed change of premises was a minor relocation. Accordingly the Committee dismisses the appeal.

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Boots UK Ltd
Lloyds Pharmacy Ltd
Family Health Services, on behalf of North East Essex PCT
Essex LPC