

17<sup>th</sup> December 2009

REF: SHA/15348

**APPEAL AGAINST BATH AND NORTH EAST SOMERSET PCT DECISION TO GRANT AN APPLICATION BY LLOYDS PHARMACY LTD FOR MINOR RELOCATION OVER 500M FROM 43 HIGH STREET, KEYNSHAM, BRISTOL BS31 1DS TO KEYNSHAM HEALTH PARK (HEALTH CENTRE SITE), ST CLEMENTS ROAD, KEYNSHAM, BRISTOL BS31 1AG**

**1 The Application**

By application dated 11<sup>th</sup> May 2009, Lloyds Pharmacy Ltd (“the Applicant”) applied to Bath and North East Somerset Primary Care Trust (“the PCT”) for minor relocation from 43 High Street, Keynsham, Bristol BS31 1DS to Keynsham Health Park (Health Centre Site), St Clements Road, Keynsham, Bristol BS31 1AG. In support of the application it was stated:

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

- 1.1 There are two routes to the proposed site. Either along the High Street/Temple Street and through housing (Albert Road) or along High Street and along Dapps Hill.

Reasons for minor relocation:

- 1.2 To move to improved premises.

Why applicant believes it is a minor relocation

- 1.3 The Applicant believes this application satisfies all the criteria for a minor relocation including being within the same neighbourhood, a short distance and serving the same population.
- 1.4 As the PCT will be aware they are currently considering an application for inclusion in the pharmaceutical list at the same site. Should that application be refused then the Applicant submits it follows that the criteria for a minor relocation can be satisfied.

**2 The PCT Decision**

The PCT considered and decided to grant the application. At the same time the PCT also considered an application by Lloyds Pharmacy Ltd for preliminary consent at the proposed site. The relevant sections of the decision letter dated 6<sup>th</sup> August 2009 state:

Neighbourhood:

- 2.1 The neighbourhood was defined as
  - 2.1.1 West - the boundary of the town from where Charlton Road meets Parkhouse Lane and running behind the houses up to include Broadland School up to the Ring Road (A4).
  - 2.1.2 North - along the ring road until the River Chew in Keynsham Memorial Park.
  - 2.1.3 East - following the River Chew to the end of the urbanisation at St Clements Rd through the fields to Parkhouse Lane.

- 2.2 The previous decisions to grant 100 hour contract to Lloyds Pharmacy and reject two applications from United Pharmacies for Keynsham, all taken in May 2008 were taken into account. It was accepted that there were no significant changes in the town of Keynsham so the two previous definitions of neighbourhood for Keynsham East and West were accepted:

2.2.1 *"The town of Keynsham the PCT is divided into two neighbourhoods East and West with an overlap of the main shopping area and Keynsham Hospital site - which both clearly serves the whole of Keynsham with all the key facilities: banks, post office, leisure centre, park, council offices etc. The river provides an obvious boundary dividing line between East and West Keynsham the rest of boundaries are defined by the obvious urban development of Keynsham. The West of Keynsham has been served by the Broadlands Secondary School and the East by Wellsway Secondary School."*

Is the proposed relocation minor?

- 2.3 The group considered that the proposed relocation was minor as the distance being proposed was 950m with no significant physical barriers.

Is the proposed relocation serving the same neighbourhood?

- 2.4 The group identified that the previous definition of the Keynsham neighbourhoods outlined under the sub heading 'Neighbourhood' would be used in this decision. Using the definition of the Keynsham neighbourhoods it was noted the proposed relocation would be serving the same neighbourhoods.

#### Summary of Minor Relocation

- 2.5 Having considered all of the factors set out above, the group felt the proposed relocation was minor and therefore granted it.

#### Decision

- 2.6 Having considered all consequential information, Bath and North East Somerset PCT have deemed that the current provision of pharmaceutical services in the neighbourhood is currently adequate. It is neither necessary nor desirable for additional pharmaceutical services as there is adequate provision of pharmaceutical services to the neighbourhoods of Keynsham. Therefore, the Lloyds Pharmacy Ltd application for preliminary consent is rejected.
- 2.7 Considering all consequential factors relating to the Lloyds Pharmacy Ltd application for minor relocation over 500m Bath and North East Somerset PCT have granted this application as it is minor in nature and would be serving the same neighbourhood.
- 2.8 The PCT's decision is therefore that the application by Lloyds Pharmacy Ltd for minor relocation over 500m from 43 High Street, Keynsham, Bristol, BS31 1DS to the Keynsham Health Park (Health Centre site), St Clements Road, Keynsham, Bristol, BS31 1AG is approved.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority, dated 2<sup>nd</sup> September 2009, Boots UK Ltd appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The distance of the relocation is 950 metres. Given the terrain of the area, Boots believe that this distance should not be considered minor in the context of the neighbourhood in question.

- 3.2 Furthermore, in moving from a High Street location to the Health Park, the pharmacy will essentially serve patients visiting the surgery based at the Health Park and not the wider population of both Keynsham neighbourhoods and patients of all the surgeries in Keynsham that currently visit the High Street location.
- 3.3 In conclusion, Boots submit that the above application does not meet the required criteria of a minor relocation, and respectfully urge the Appeal Authority to uphold this appeal accordingly.

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

This is a summary of representations received on the appeal.

##### 4.1 LLOYDS PHARMACY LTD

- 4.1.1 The appeal does not provide any evidence as to why the distance or the journey between the two sites cannot be considered minor. Boots do not suggest any difficulties that patients would face.
- 4.1.2 The appellant does not suggest that the relocation would be into a different neighbourhood or that there are any barriers between the two sites. Lloyds submit that the pharmacy at the proposed site would continue to serve the Keynsham neighbourhood. There would still be two pharmacies in the High Street area should residents wish to utilise pharmaceutical services in that part of the neighbourhood however, it is a straightforward journey to the proposed site and can readily and conveniently be accessed.
- 4.1.3 The LPC along with the PCT has considered and recommended that the application be approved and provides further justification that the proposed move is minor in nature. Keynsham is not an urban inner city location but is a quality suburban settlement where people move freely and easily.
- 4.1.4 Lloyds believe this application satisfies all the criteria for a minor relocation including being within the same neighbourhood, a short distance and serving the same population and there are no barriers between the two sites. There is no evidence to the contrary.
- 4.1.5 For the above reasons therefore Lloyds would respectfully ask the FHS Appeal Unit to dismiss the appeal and uphold the decision of the PCT and approve the application.

#### 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) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) (“the Regulations”) which states :

‘In the case of any application under regulation 5(1)(b), where the applicant intends to change within the neighbourhood the premises from which he provides pharmaceutical

services, being the same services as he intends to provide from the new premises, and the Primary Care Trust is satisfied that the change is a minor relocation; and, the provision of pharmaceutical services will not be interrupted (except for such period as the Primary Care Trust may for good cause allow), the PCT shall grant the application, subject to regulations 9(2) and 21(10) (and accordingly regulations 11 to 20 shall not apply).'

- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted the neighbourhood defined by the PCT. In the absence of any dispute raised on this matter, the Committee was content to accept that neighbourhood for the purpose of determining this application. The Committee noted that the existing and proposed sites were within the same neighbourhood.
- 5.7 The Committee noted that the appellant sought to argue that the distance between the two sites is not minor. In considering the distance, given as 950 metres by the PCT, the Committee was mindful that this is at the upper end of what might be regarded as acceptable for a minor relocation.
- 5.8 The Committee noted that no information had been provided to suggest the existence of any barriers between the two sites. The Committee also noted that whilst the appeal mentioned the terrain of the area, it did not provide any comments or information for the Committee to consider.
- 5.9 The Committee had regard to the appellant's contention that a pharmacy at the proposed site would serve patients visiting the Health Park and not the wider population who access the existing High Street pharmacy. The Committee was mindful that residents currently access pharmaceutical services and other facilities in the east of the neighbourhood i.e. the town centre, and therefore took the view that it was reasonable to assume that those same residents will have no difficulties in travelling south-east to the proposed site. In effect the Committee accepts that, with advantage and disadvantage for some, the overall effect is likely to be neutral. In the absence of any information regarding the neighbourhood demographics, car ownership or public transport, the Committee concluded that the distance alone was not prohibitive in such an area and therefore the consequence on the reliant population could reasonably be considered minor in nature.
- 5.10 The Committee noted that the application states that the same services and hours are to be provided without interruption.

## 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:

Lloyds Pharmacy Ltd  
Boots UK Ltd  
Avon PCSA on behalf of Bath and North East Somerset PCT