

11th February 2010

REF: SHA/15305

APPEAL AGAINST BARNSELY PCT DECISION TO GRANT AN APPLICATION BY H & K HEALTHCARE LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF 220 - 349 PONTEFRACT ROAD, LUNDWOOD, BARNSELY

1 Preliminary Consideration

- 1.1 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 consultation.
- 1.2 The Committee was of the view that an Oral Hearing should be held before the appeal was determined.

2 Oral Hearing

- 2.1 An Oral Hearing was therefore held on 14th January 2010 at Kendray Hospital, Doncaster Road, Barnsley S70 3RD.
- 2.2 A copy of the Oral Hearing report is attached.

3 Further Consideration by the Committee

- 3.1 Each member of the Committee had read the Oral Hearing report in full which was considered together with all the other documents previously referred to.
- 3.2 The Committee had regard to Regulation 12(1), the necessary or desirable test, and in considering that test, had regard in particular to 12(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 3.3 The Committee noted the various appendices referred to in the Oral Hearing Report. As these had either previously been seen by the parties, or were not necessary to convey the decision in addition to the report, these are not included as part of this decision letter.
- 3.4 The Committee noted the Oral Hearing recommendation for the definition of the neighbourhood, made after a site visit. On the basis of the site visit report, the Committee adopted this definition for the purpose of this application.
- 3.5 The Committee noted at 9.1.9 the Panel had concluded it did not consider the size of the population alone within the neighbourhood justified the opening of another pharmacy based upon national statistics for the ratio of pharmacies to the size of the population. However the Committee reminded itself that the test to be applied would be to determine whether adequacy was secured within the neighbourhood.
- 3.6 The Committee noted both the PCT and the applicant had referred to there being no choice within the neighbourhood. The Committee carefully considered the submissions made and the degree of weight to be given. It concluded that initially some difficulties of access to Lam's Pharmacy due to signage had been identified but this matter had now been mainly remedied. It also noted the short distance between the proposed location and the existing pharmacy.

3.7 The Committee noted the applicant had claimed services were not wholly adequate, but concluded that for the reasons given in 9.1.11 and 9.1.13 adequacy was secured and it was neither necessary nor desirable to grant the application.

4 **Decision**

Accordingly the Committee allows the appeal.

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Oral Hearing Panel Members
Barnsley PCT
H & K Healthcare Ltd
Lams Chemist
R D Hill Dispensing Chemist
Gorgemead Ltd
Barnsley LPC