

25 January 2010

REF: SHA/15424

**APPEAL AGAINST SUTTON & MERTON PCT
DECISION TO GRANT AN APPLICATION BY L
ROWLAND & CO (RETAIL) LTD FOR PRELIMINARY
CONSENT PRIOR TO INCLUSION IN THE
PHARMACEUTICAL LIST AT RAVENSBURY PARK
MEDICAL CENTRE, RAVENSBURY PARK, MITCHAM**

1 The Application

By application dated 15 June 2009, L Rowland & Co (Retail) Ltd ("the Applicant") applied to Sutton & Merton Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at Ravensbury Park Medical Centre, Ravensbury Park, Mitcham. In support of the application it was stated:

- 1.1 There is no pharmacy in the defined neighbourhood which indicates that patients will be disadvantaged by the inadequate pharmaceutical services within the neighbourhood making a new pharmacy necessary to secure pharmaceutical services.
- 1.2 In the report of the oral hearing ref: SHA/14997 dated April 28 2009, it was agreed there was a need for pharmaceutical services at the new Wandle Road surgery site which is situated in the defined neighbourhood.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter from NHS Primary Care Support Services (on behalf of the PCT) dated 18 September 2009 (which also referred to the current appellant's own application for the same site) states:

- 2.1 At a meeting held on 16 September 2009, members of NHS Sutton and Merton Primary Care Trust's Control of Entry Panel considered the above applications under the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended).
- 2.2 NHS Sutton & Merton Control of Entry Panel had before them copies of the Applications and relevant papers, including a map and key of the area. The Panel took into consideration the comments received from interested parties and also a report of the site visit to the area.
- 2.3 Both applications were considered together as per NHS (Pharmaceutical Services) Regulations 2005 (as amended), (Guidance revised February 2007), 3.134 "Under regulation 24(7), where it thinks fit, the PCT has a discretion to consider together two or more applications" 3.135 "Notice in writing must be given to all the applicants and all the parties entitled to be notified of the applications".

Neighbourhood Definition

- 2.4 A site visit of the neighbourhood was made by two officers of NHS Sutton and Merton. Due to the fact that both applications applied to exactly the same site, one neighbourhood was defined by the panel to encompass both applications.
- 2.5 The neighbourhood was defined and agreed by the Committee as follows:

- 2.5.1 From the proposed site for the Ravensbury Park Medical Centre turning right along the Morden Road until it meets with the London Road.
- 2.5.2 Turning left into the London Road to where it meets with the junction of Cricket Green.
- 2.5.3 Turning right into Cricket Green and then proceeding along Cricket Green into Cranmer Road.
- 2.5.4 Up to the junction with Carshalton Road and turning right into Carshalton Road until it meets with Goat Road.
- 2.5.5 Turn right into Goat Road until it meets the River Wandle.
- 2.5.6 Following the River Wandle until it meets with Morden Road and following the Morden Road until it meets the proposed site.
- 2.6 The Committee noted that both applications were for the same site and offered to provide the same services and similar hours of opening.
- 2.7 The Panel considered that it was necessary and desirable to grant both applications under Regulation 12 of the (Pharmaceutical Services) Regulations 2005 (as amended).
- 2.8 The applications for preliminary consent from Lloyds Pharmacy and L Rowland & Co (Retail) Ltd and therefore both granted.

3 **The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 16 October 2009, Lloyds Pharmacy Ltd appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 The PCT has already approved an NHS Contract application to this site to Lloyds Pharmacy Ltd. Lloyds submit therefore, it is not necessary or desirable to grant two NHS Contracts to the same location. The application by Lloyds Pharmacy Ltd was submitted prior to that of L Rowland & Co Ltd and therefore the application by Rowlands should have been refused.
- 3.2 The PCT has not provided any justification as to why they consider that two NHS Contracts are desirable from the same location.
- 3.3 For the above reasons Lloyds respectfully ask the Appeal Unit to reconsider this application and uphold this appeal.

4 **Summary of Representations**

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

NHS Primary Care Support Service (on behalf of the PCT)

- 4.1 The PCT received two preliminary consent applications for the same premises from Lloyds Pharmacy Ltd and L Rowland & Co (Retail) Ltd both within 11 working days of each other. The PCT did not feel it appropriate to prefer one application over the other purely on administrative grounds.

- 4.2 Turning to the range of services offered and the hours of opening outlined on both application forms, the PCT again, could find no difference of note. Therefore, in the interests of natural justice, it was resolved to approve both applications to ensure that the applicant who was first able to conclude the necessary negotiations regarding the premises would not be debarred from commencing the provision of pharmaceutical services in this particular neighbourhood.
- 4.3 The PCT therefore respectfully requests that the relevant Committee dismisses the appeal.

5 Further Comments

Lloyds Pharmacy Ltd

- 5.1 Lloyds would wish to confirm to the Appeal Unit that Lloyds Pharmacy now has outstanding consent for an NHS Contract in the vicinity of the Ravensbury Park Medical Centre, Ravensbury Park, Mitcham. This is with effect from the 28 October 2009 as there were no appeals against the PCT decision to approve the applications to Lloyds Pharmacy Ltd. I have enclosed the letter from the PCT confirming this.
- 5.2 There is already an outstanding grant for an NHS Contract to Lloyds Pharmacy Ltd to the site applied for by L Rowland & Co Ltd and therefore Lloyds respectfully submit the application by Rowlands should be refused as there is already outstanding consent and it is not necessary or desirable to have two NHS contracts in the same location.
- 5.3 For the above reasons, Lloyds ask that their appeal be upheld.

The appellant enclosed a copy to letter to them from NHS Primary Care Support Service, dated 28 October 2009.

6 Consideration

- 6.1 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 location of the proposed pharmacy.
- 6.2 It also had before it the responses to the Authority's own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 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").
- 6.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 6.6 The Committee noted L Rowland & Co (Retail) Ltd's application was for preliminary consent prior to inclusion in the pharmaceutical list at Ravensbury Park Medical Centre, Ravensbury Park, Mitcham.
- 6.7 The Committee noted the PCT's defined neighbourhood for the proposed pharmacy as described at paragraph 2.5, had not been disputed on appeal. After having considered the information in respect of the application, the Committee was of the view the PCT's neighbourhood should be adopted for the purposes of determining the appeal.

- 6.8 The Committee noted the appeal was solely concerned with the PCT's decision to grant L Rowland & Co Ltd's application. The appellant argued L Rowland's application, should not have been granted, given Lloyds own application for the same site, had already been approved by the PCT. The Committee noted there is no dispute that the Lloyds application was submitted to the PCT prior to that of L Rowland & Co Ltd. The applications were considered at the same PCT decision making meeting on 16 September 2009.
- 6.9 The PCT's comments in response to the appeal, suggested the decision to grant both applications was taken because the Trust was unable to find significant differences in the applications. However, the Committee noted the decision to grant Lloyds application had not been appealed. In the circumstances, there is already an extant grant in the neighbourhood namely, the appellant's own proposed pharmacy for the same site as the current application. The Committee was provided with no information to show that an additional contractor was required to secure the adequate provision of services in the neighbourhood.
- 6.10 The Committee, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the extant grant for a pharmacy within that neighbourhood with the provision of pharmaceutical services outside the neighbourhood, in particular by way of access and a reasonable choice of provider, determined that pharmaceutical services were likely to be secured therefore, it was neither necessary nor expedient to grant L Rowland & Co (Retail) Ltd's application.

7 Decision

The Committee was of the view that the proposed pharmacy was neither necessary nor expedient to secure the adequate provision of services in the neighbourhood. Accordingly, the Committee has allowed the appeal.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr M Cox, Lloyds Pharmacy Ltd – Appellant
Mr I Cowan, L Rowland & Co (Retail) Ltd – Applicant
Mrs K Lockton – Boots UK Ltd
Ms D Williams - NHS Primary Care Support Service (on behalf of the PCT)