

21st January 2010

REF: SHA/15486

APPEAL AGAINST WORCESTERSHIRE PCT DECISION TO REFUSE AN APPLICATION BY MR B S ATWAL FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT PERSHORE ROAD, HAMPTON, WORCESTERSHIRE WR11

1 The Application

By application dated 20th March 2009, Mr B S Atwal ("the Applicant") applied to Worcestershire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at Pershore Road, Hampton, Worcestershire WR11. In support of the application it was stated:

- 1.1 The population within the suggested neighbourhood has been estimated at 4000, with many of the residents having to travel more than 1.2km to access the nearest pharmacy and the additional services that may be provided.
- 1.2 It is for this reason that the residents in Hampton and the surrounding areas deserve a pharmacy that will deliver services, which will benefit the community as a whole.
- 1.3 The map (*attached to application*) shows the proposed neighbourhood for which the intended pharmacy will serve.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 6th October 2009 states:

- 2.1 The Committee members had before them a copy of the application, a map indicating the location of existing pharmacies, doctors' surgeries and the proposed new pharmacy site, and copies of the responses to Worcestershire PCT's statutory consultations.
- 2.2 A site visit had been undertaken by the Chairman, one of the members, and an officer of the PCT.
- 2.3 For the purposes of this application, the Committee determined the neighbourhood as the urban area of Hampton as far east as the brook.
- 2.4 Whilst carefully considering the application, the Committee noted the following facts:
 - 2.4.1 That the site of the proposed new pharmacy was within a non controlled area.
 - 2.4.2 That within the neighbourhood, as defined, there were no doctors' surgeries and no pharmacies.
 - 2.4.3 That objections to the application had been received from five pharmacies in Evesham.
 - 2.4.4 That objections to the application had been received from two dispensing doctors' practices in Evesham.
 - 2.4.5 That an objection had been received from the Local Medical Committee.

- 2.4.6 That there had been no expressions of dissatisfaction from members of the public regarding adequacy of pharmaceutical services in the neighbourhood.
- 2.5 The Chairman described the area as quite densely populated. The area to the north of Pershore Road appeared more affluent, with at least one car per household parked on the drive. There were also several bus stops in Evendene Road which ran through the housing estate, comprising mostly bungalows. There was a static caravan park to the east. The area to the south of Pershore Road contained social and ex-social housing. There was a small first school and nursery on the south eastern edge of Hampton. On the main road there was a Spa, which looked as if it had been recently refurbished, and a post office which appeared to be well patronised. There was a farm shop on the main road at the western edge. There was also a pizza take-away just off the main road and a working men's club. There were regular buses along the Pershore Road into Evesham town centre, and there was a bus stop directly outside Morrisons supermarket. The distance from the school to the bridge in Evesham was 0.8 miles.
- 2.6 In Evesham there were six pharmacies, three of which were located adjacent or very close to a GP surgery. There were four GP surgeries, three of which were dispensing.
- 2.7 The Committee were of the opinion that residents of Hampton would have to go to Evesham to access a GP surgery and the shops and supermarkets. They noted that there were parts of Evesham that were further away from a pharmacy than Hampton was.
- 2.8 The PCT's Pharmaceutical Adviser had confirmed that no pharmaceutical need had been identified that was not already being met. There was also no evidence of any complaints that anyone was dissatisfied with the service currently provided.
- 2.9 The Committee noted that the applicant was not proposing to provide any services additional to those currently being provided in Evesham, and that the proposed opening times were no longer than those currently being offered.
- 2.10 The Committee also reviewed the question of reasonable choice as part of the consideration as to whether there was a gap in service that was sufficiently proven in order to grant the application, and noted that the Pharmaceutical Needs Assessment had not identified any inadequacy in the current provision of pharmaceutical services.
- 2.11 In view of all the facts and circumstances, the Committee was of the opinion that the proposed pharmacy was neither necessary nor desirable in order to secure the adequate provision of pharmaceutical services for the neighbourhood.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 28th October 2009, the Applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The neighbourhood that has been defined contains a population of approximately 3800 residents. A neighbourhood of this size would benefit from a pharmacy to service their general healthcare needs as there is no provider, at this time, nearby to fulfill this requirement.
- 3.2 Though the P.C.T. have stated that the residents of the defined neighbourhood have bus routes operating, that allow them to travel throughout the Evesham area, access to the nearest pharmacy or dispensing doctors surgery is still 0.7 miles. This still puts resident of the suggested neighbourhood at a disadvantage, especially the elderly or disabled, due to the fact that they still have to travel into the town centre to access basic healthcare services.

- 3.3 With the eventual roll-out of E.P.S. patients will be able to access their medical prescriptions from their local pharmacy. This will therefore reduce the burden on local G.P. practices, as patients will only have to see their doctors for their six monthly reviews.
- 3.4 The proposed pharmacy will endeavour to further enhance the healthcare needs of the defined neighbourhood, to the benefit of the residents in that area.

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.

4.1 SHAUNAK'S PHARMACY

- 4.1.1 The applicant has failed to provide any evidence to suggest that the existing pharmacies in the area are unable to meet the present demand for pharmaceutical services.
- 4.1.2 The applicant has failed to demonstrate any indication of significant difficulties encountered by patients whilst wishing to access pharmaceutical services in the area.
- 4.1.3 A neighbourhood does not necessarily have to contain a pharmacy if services are accessible in adjacent neighbourhoods.
- 4.1.4 The neighbourhood proposed by the applicant is unduly restrictive, and Shaunak's believe does not constitute a true neighbourhood.
- 4.1.5 The residents of the highlighted neighbourhood already, on a regular basis, access Evesham for their essential provisions and requirements including medical and pharmaceutical services.
- 4.1.6 In conclusion, Shaunak's contend that the applicant has failed to provide any factual information in accordance with regulation 12(1) that would indicate an inadequacy within the existing pharmaceutical provision.
- 4.1.7 Shaunak's would therefore respectfully request that the PCT reject this appeal as being neither necessary nor desirable.

4.2 WORCESTERSHIRE LMC

- 4.2.1 This issue was discussed at the Local Medical Committee meeting held on the 10th December. The committee does not feel that this application is necessary. The LMC feel that the locality is already very well served.
- 4.2.2 The comment in the appeal regarding E.P.S. the LMC believe to be totally spurious.

4.3 BOOTS UK LTD

- 4.3.1 The PCT have provided a detailed letter stating their reasons for rejecting the application. Boots agree with the PCT decision to reject the application and their reasoning.

- 4.3.2 There are six pharmacies currently serving the area of Evesham. These pharmacies provide patients with access to services seven days a week (Boots, Morrisons) and until late in the evening (Morrisons).
- 4.3.3 Services provided by Boots pharmacy at Bridge Street include: supervised administration, EHO by PGD, Smoking Cessation service, Medicines Use Reviews, services to care homes and free prescription collection and delivery service.
- 4.3.4 Boots pharmacy has pharmacists accredited to provide advanced and enhanced services and consultation facilities that will enable Boots provide additional services that should the PCT wish to commission such.
- 4.3.5 The PCT have stated that their Pharmaceutical Adviser had confirmed that no pharmaceutical need had been identified that was not already met. Furthermore, that the Pharmaceutical Needs Assessment had not identified any inadequacy in the current provision of pharmaceutical services.
- 4.3.6 There have been no complaints to Boots' knowledge to the PCT or LPC to prove that the provision of pharmaceutical services is anything other than adequate. Furthermore, The applicant has not provided any evidence of support for this application from local residents or patients groups.
- 4.3.7 Whilst Boots acknowledge the neighbourhood defined by the PCT Boots believe Hampton is still part of Evesham. Facilities within the Hampton area are limited and Boots believe that the vast majority of residents will visit Evesham town centre as part of the fabric of their everyday lives.
- 4.3.8 For any patients who do not have access to a vehicle or who are unable to use the public transport available, free collection and delivery services are provided by existing pharmacies.
- 4.3.9 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

4.4 STEWART PHARMACY

- 4.4.1 With response to Mr Atwal's letter 28 October 2009 Stewart Pharmacy would like to contest the reasons for appeal.
- 4.4.2 Specifically:

Neighbourhood
- 4.4.3 The proposed Neighbourhood is part of Stewart Pharmacy Waterside/Bengeworth and is 176 yards from Waterside Pharmacy.
- 4.4.4 The 2001 Wychavon Census for parishes does not include Hampton as a separate parish, but as part of Evesham.
- 4.4.5 The approximate 3,800 residents is questionable as per the Evesham Journal Newspaper distribution coverage 2009 which identifies Hampton has having 694 dwellings.
- 4.4.6 If these criteria for a pharmacy are upheld then Fairfield, the Four Pools, and Greenhill would also be entitled to separate pharmaceutical services.

- 4.4.7 The application is not supported by an assessment of pharmaceutical needs, also confirmed by a recent survey carried out by Stewart Pharmacy.

Access

- 4.4.8 Stewart Pharmacy have enclosed both the local and County Bus Time tables which gives a comprehensive service to the residents of Hampton.
- 4.4.9 No provision has been indicated as to what off road disabled parking will be provided on this busy road. Stewart Pharmacy Waterside has its own car park with dedicated spaces for disabled patients in addition to a large free hospital car park.
- 4.4.10 Both the Vale Pharmacy and Stewart Pharmacy offer a Free Daily Delivery and Collection Service to Hampton with Stewart Pharmacy also delivering acute medication the same day the prescription is issued.
- 4.4.11 Hampton does not have any Medical Services so patients will have to travel to see their Doctor; the nearest Surgery being Riverside next to Stewart Pharmacy.

E.P.S.

- 4.4.12 Stewart Pharmacy consider this argument to be contradictory. Assuming E.P.S ever becomes a reality with the inevitable cuts the Government will have to make; the location of one extra pharmacy will be of no importance since patients will nominate their pharmacy of choice to dispense and deliver their prescriptions.
- 4.4.13 Stewart Pharmacy has been E.P.S compliant since 2006 and E.P.S capable since 2008.
- 4.4.14 Stewart Pharmacy offers a comprehensive Repeat Prescription Service which already meets the needs of the Elderly and vulnerable who find modern technology alien and appreciate being able to phone; as and when they please to re-order their monthly medication, home shopping and health care advice from staff.
- 4.4.15 In addition Stewart Pharmacy' s previous objections are equally valid:-
- 4.4.16 The application is not supported by any assessment of local pharmaceutical needs.
- 4.4.17 The unbudgeted additional expenditure for this proposed application would place an unacceptable strain on the NHS funds, thereby depriving existing contractors of any new advanced services to the detriment of the community.
- 4.4.18 With reference to the proposed neighbourhood:
- 4.4.18.1 The proposed pharmacy is 1232 yards from Stewart Pharmacy Waterside.
- 4.4.18.2 Stewart Pharmacy Waterside/Bengeworth serves Evesham South which includes Hampton, Bengeworth, Cheltenham road and the villages to the south.
- 4.4.18.3 The demographics of the neighbourhood are mixed but predominately owner occupied.

- 4.4.18.4 The proposed Neighbourhood is well serviced by local transport (Hampton to Evesham Bus station is five minutes as per enclosed bus timetable) with the majority of homes having their own transport.
- 4.4.19 Stewart Pharmacy offers a Free Delivery and Collection Service throughout the week,
- 4.4.20 Stewart Pharmacy Waterside opens 8.30am to 6pm Monday to Friday and Saturday Mornings 9am to 12pm. Thirteen hours more than the proposed pharmacy and with particular support to Riverside Surgeries late openings and Saturday morning service.
- 4.4.21 Stewart offers a 24 hours emergency service.
- 4.4.22 Stewart has opened every Bank Holiday when requested by the PCT.
- 4.4.23 Stewart has a well established business continuity plan, which was demonstrated as highly effective during the 2007 floods when it was able to remain open throughout. (Letter from Hospital enclosed)
- 4.4.24 Stewart offers all the local enhanced services proposed but additionally offers Chlamydia Testing, a bespoke Weight Management Service sponsored by the Public Health department and is now an ACP.
- 4.4.25 Stewart offers a Repeat Prescription Service either via the telephone or on our website www.stewartpharmacy.co.uk.
- 4.4.26 With reference to a recent survey carried out by Stewart Pharmacy at Stewart Waterside (details enclosed) there was overwhelming support for the service provided, the only comments were the provision of an Evening Service which Stewart Pharmacy would be happy to provide should the PCT so wish. Although Morrison's opening hours are: - Monday/Tuesday/Wednesday/Saturday-9am to 9pm. Thursday/Friday-9am to 8pm and Sundays-10am to 4pm.
- 4.4.27 The services provided by Stewart's pharmacies and other pharmacies are considerably more than is needed to provide an adequate pharmaceutical service, and further pharmacies will not increase access or choice, but place a drain on the NHS Resources that are needed to provide investment in quality services. If granted the service would be spread across a greater number of pharmacies, but the quality would be reduced, as funding is shared.
- 4.4.28 In addition please find enclosed.
- 4.4.28.1 Bus time tables
- 4.4.28.2 Stewart Pharmacy Survey and Summary
- 4.4.28.3 Letter from Evesham Hospital
- 4.4.28.4 Journal Distribution Coverage
- 4.4.28.5 Stewart Pharmacy's Original Letter Opposing the Application.
- 4.4.29 In Summation this application is not necessary and not desirable as the residents of Hampton and villages already have a choice of nine dispensaries. The applicant is not proposing to provide any services additional to those currently being provided in Evesham and the proposed opening times are considerably

shorter than those currently being offered. Stewart Pharmacy consider the neighbourhood of Hampton to be an integral part of Stewart's Waterside pharmacy without which the viability of Stewart Pharmacy would be compromised. In addition this would be an unnecessary extra burden on the tax payer.

4.5 LLOYDS PHARMACY

- 4.5.1 Lloyds maintain their objection to this application as they contend that the addition of a further chemist contractor cannot be considered necessary or desirable in order to secure the adequate provision of NHS pharmaceutical services to the area.
- 4.5.2 The PCT thoroughly considered the accessibility and location of the existing pharmacies when arriving at their decision and also considered the services that those pharmacies provided.
- 4.5.3 The appeal does not provide any evidence that the existing pharmaceutical services are not adequate. The existing pharmacies in Lloyds' opinion are wholly adequate to meet the needs of patients, residents and visitors and therefore Lloyds respectfully ask the FHS Appeal Unit to dismiss the appeal and uphold the decision of the PCT accordingly.

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 (or location) 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 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").
- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted the PCT neighbourhood of Hampton as shown on a map. The Committee noted that whilst the Applicant had submitted an alternative definition in their application, they had not sought to dispute the PCT neighbourhood on appeal. The Committee were of the view that the PCT neighbourhood appeared to be based on appropriate features of the area and therefore found it reasonable to accept the PCT neighbourhood for the purpose of determining this application.
- 5.7 The Committee noted that there are no pharmacies within the defined neighbourhood. The Committee were of the view that it is not axiomatic that a contract is needed within such a neighbourhood in order to secure adequacy. While there is no choice in the neighbourhood, the level of adequacy may be dependent on pharmaceutical services elsewhere. The Committee noted that there are 6 pharmacies in Evesham with the nearest stated by the Applicant to be 0.7 miles from the proposed site. The Committee further noted that the pharmacies are conveniently located within the vicinity of medical services and/or local amenities.

- 5.8 The Committee noted the Applicant states that the distance to existing provision causes difficulties for the elderly and disabled. The Committee had regard to comments and information provided regarding levels of car ownership and regular bus services through the neighbourhood and further noted that no information had been submitted to suggest a high elderly or disabled population.
- 5.9 The Committee considered that the current provision of pharmaceutical services could not be said to be wholly inadequate and therefore concurred with the PCT that the application was not necessary. The Committee went on to consider, on the spectrum of adequacy, whether the application was desirable.
- 5.10 The Committee noted the Applicant's estimation of the neighbourhood population as 3,800 however had not been provided with the source of this information. The Committee also has regard to the comments by Stewart Pharmacy on this matter.
- 5.11 The Committee noted comments from existing pharmacies regarding the services they provide and noted that there was no indication from the Applicant that they were offering any services above those currently available. The Committee further noted that the Applicant is not offering any advantage over existing pharmacies in terms of opening hours.
- 5.12 The Committee accepted that the application offers a geographical advantage to those within the neighbourhood however did not consider this factor as having sufficient weight upon which to conclude that it was expedient to grant the application where in all other respects services were adequate.
- 5.13 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the lack of 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, then the Committee determined that the applicant had failed to discharge the burden of proof that the proposed pharmacy was necessary or expedient to secure the adequate provision of pharmaceutical services in the neighbourhood.

6 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 dismisses the appeal.

Abby Richards Appeal Officer

A copy of this decision is being sent to:

Mr B Atwal
Worcestershire PCT
Worcestershire LPC
Lloyds Pharmacy Ltd
Stewart Pharmacy
Boots UK Ltd
Shaunak's Pharmacy

