

12th January 2010

REF: SHA/15470

APPEAL AGAINST BOLTON PCT DECISION TO REFUSE AN APPLICATION BY SYKES CHEMIST LTD FOR MINOR RELOCATION OVER 500 METRES FROM UNIT 6, MARSDEN ROAD, BOLTON BL1 2AY TO LANDMARK HOUSE, CHORLEY NEW ROAD, BOLTON BL1 4AP

1 The Application

By application dated 24th March 2009, Sykes Chemist Ltd (“the Applicant”) applied to Bolton Primary Care Trust (“the PCT”) for minor relocation from Unit 6, Marsden Road, Bolton BL1 2AY to Landmark House, Chorley New Road, Bolton BL1 4AP. In support of the application it was stated:

- 1.1 With the relocation of Landmark Pharmacy to the Marsden Road Pharmacy at 6 Marsden Road, Bolton. The Applicant wishes to relocate the Marsden Road Pharmacy to the current site of Landmark Pharmacy at 12 Chorley New Road, Bolton. Parking facilities are better at Landmark House, especially at night. Patients will have better access.
- 1.2 Within same neighbourhood, serving same population. The nearest route is along Marsden Road, St Georges Road, then Chorley New Road.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 9th October 2009 states:

- 2.1 After careful consideration the PCT must inform the Applicant that the application has not been supported.
- 2.2 The application is not considered to be a “Minor Relocation”. The current and proposed pharmacy sites are located in different Neighbourhood areas. Marsden Road Pharmacy is considered to be within the Town Centre Neighbourhood area which comprises mainly of retail shops and businesses and public amenities, banks, etc. Landmark House is considered to be within the mainly residential Neighbourhood to the north. The pharmacy would not therefore serve the same population. The Town Centre population currently accesses pharmaceutical services from within the Town Centre Neighbourhood area, and the PCT believes that this population would not have the same access to these services from the proposed location.
- 2.3 With regard to distance and the terrain of the area. The distance between the two sites by the shortest route is 675 metres. There is a steady incline up to the proposed site ending in a steeper incline as you approach the crossing at the top of St Georges Road. Both Marsden Road and St Georges Road are very busy major roads and the PCT believes that though there are crossings along the route, that these roads form a natural barrier to pedestrians. Especially the elderly and mothers with prams.
- 2.4 Each site is also located within different Postcode Boundaries.
- 2.5 The PCT looked at various maps and categories of statistics of the Office of National Statistics data for both sites. This data shows that each pharmacy site is located in different Middle Super Output Areas (Marsden Road Pharmacy is within MSOA16 –

Town Centre and Landmark House is within MSOA15 – Victory). The Statistics show that these two areas are completely different in every aspect and that each of these pharmacies is located in very differed Neighbourhood Areas. There are significant differences in the population of each of the two areas and this is clearly demonstrated in the statistical information available. This data and differences in population prove that the pharmacies are located in two very different neighbourhood areas and this is validated by the Statistics. Various Neighbourhood statistics were noted by the PCT, including the following:

	For Area Bolton 016A Marsden Road Pharmacy	For Area Bolton 015C Landmark Pharmacy	For Bolton Metropolitan District
Population density (number of people per hectare)	Rate 8.50	Rate 51.91	Rate 18.67
People with a limiting long-term illness	43.69%	24.57%	20.34%
People aged 16-74 Economically Active Employees Full Time	27.16%	31.52%	40.45%
People aged 16-74 Economically Inactive Permanently Sick/Disabled	22.10%	10.02%	7.41%
Households with no Car or Van	69.20%	41.49%	30.29%
Persons on State Benefit, Unemployed, Lowest Grade Workers	35.18%	16.65%	16.63%

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority, dated 24th October 2009, the Applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The following facts need to be taken into account.
- 3.2 PCT and Appeal Authority must be made aware that there is already and has been a pharmacy at 12 Chorley New Road Bolton since 1998.
- 3.3 The Pharmacy is Landmark Pharmacy, opened in the days of Wigan and Bolton Health Authority, when the out of hours doctors service for the whole of Bolton was based at the same site.
- 3.4 The pharmacy was open till 11pm everyday of year including Christmas day, Boxing day, New Years day, and Easter holidays.

- 3.5 The pharmacy serves whole of Bolton for its out of hours pharmaceutical needs and the name "LANDMARK PHARMACY" has become synonymous with out of hours pharmaceutical service. (It became the first port of call for the populations of Bolton including Salford, Darwen, Chorley, Wigan, Bury etc.)
- 3.6 In case of Landmark the neighbourhood could be defined as WHOLE of Bolton as this is what it serves and provides pharmaceutical services to.
- 3.7 What the Applicant is asking PCT is minor relocation of Marsden Road Pharmacy to site of Landmark Pharmacy at 12 Chorley New Road to provide the same services and hours.
- 3.8 PCT have already *granted* the Applicant a minor relocation of Landmark Pharmacy to site of Marsden Road Pharmacy on 21/11/2008 to provide the same services and same opening hours and this relocation is effective until 16/12/09.
- 3.9 The Applicant cannot see ANY reason under this EARTH as to why the PCT is willing to grant a minor relocation one way but NOT the other (Natural JUSTICE!).
- 3.10 The Applicant will be providing 100 hours service from 12 Chorley New Road with its own parking facilities for the patients.
- 3.11 Bolton PCTs argument of the two pharmacies being in the 2 different neighbourhoods does not withstand scrutiny as they seem to bring different criteria in both cases.
- 3.12 Neighbourhoods can not be drawn by postal codes and that reasoning has flaws in it as you could be standing 1 foot away from each other and you would be standing in different postal code areas, it does not mean that the neighbourhood different. Neighbourhoods are defined by people living in it and their convenience and CHOICE to access a particular service.
- 3.13 Minor relocation of Landmark Pharmacy to Unit 6 Marsden Rd which has been granted is exactly the same distance away (675m) as quoted by Bolton PCT so there is NO REASON as to why Marsden Rd Pharmacy can not relocate to exactly same site at 12 Chorley New Road Bolton in the opposite direction.
- 3.14 The Applicant quotes the PCT letter of 24/11/2008 which granted the relocation of Landmark Pharmacy to Marsden Road Pharmacy *"has approved the application as a Minor Relocation as the proposed move is of a short distance within the same Neighbourhood area, with the pharmacy continuing to serve the same population."* Surely the neighbourhood has not changed in the intervening 10 month period? (Applicant's emphasis.)
- 3.15 With reference to PCTs definition of neighbourhood, Marsden Road area has hardly any residential population by their definition but by moving 200 yards towards St Georges Rd/Marsden rd junction you are in a residential area which is common to both sites. So in deciding neighbourhood areas by middle super output areas if purely decided by people in it and choosing which service to access where, by quality and choice and convenience.
- 3.16 The Applicant urges the Appeal Unit to allow the relocation of Marsden Road Pharmacy to Landmark Pharmacy, just as the PCT allowed the relocation of Landmark Pharmacy to Marsden Road. There are going to be no new pharmacies; no extra cost to the NHS; just the opening hours will change at each site. The services will remain the same.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 GORGEMEAD LIMITED

- 4.1.1 Currently, Landmark Pharmacy at Landmark House, 12 Chorley New Road, Bolton, BL1 4AP offers pharmaceutical services to their own neighbourhood, and not the whole of Bolton. There have been no out of hour services in the location since December 2007. It has been the applicants choice to open the hours they stated in their appeal, at Landmark House, and have recently reduced these hours. This neighbourhood is different to that in Bolton Town Centre, as defined below. It is mainly residential with some retail along Chorley Old Road.
- 4.1.2 Landmark pharmacy was granted a minor relocation over 500m to the site of this applicant's pharmacy at 6 Marsden Road. The PCT allowed this minor relocation, but unfortunately local contractors were not able to comment and appeal against their decision as they were not informed through the usual processes. Judicial review would have been their only route, at great expense. In the meantime the 100hour was granted and opened at 6 Marsden Road. Hence the situation with this relocation having to occur. Because there were incorrect processes granting the original application does not mean those same incorrect processes should grant this application. 'Natural Justice' does not come into this, and the PCT are fully aware of the mistake and the potential legal challenge if they do not follow guidance on the handling of applications correctly.
- 4.1.2.1 The applicant can close their current 100 hour pharmacy at Marsden road, and apply for another 100 hour pharmacy at Landmark House - there is no need for a minor relocation.
- 4.1.3 From Gorgemead's previous letter to the PCT
- 4.1.3.1 Gorgemead do not believe the move is within the same neighbourhood. Gorgemead define the current position of the pharmacy at 6 Marsden Road as being in Bolton town centre; North - Topp Way (A573), East - St Peters Way, South - Trinity Street, West Moor Lane, Marsden Road.
- 4.1.3.2 This neighbourhood incorporates mainly retail outlets and public amenities such as the town hall, theatres, banks.
- 4.1.3.3 This population within Gorgemead's defined neighbourhood access their pharmaceutical services from the pharmacies within the town centre. Gorgemead believe they would not have the same access to these services from the proposed location.
- 4.1.3.4 There is a slight incline up to the proposed site and it is necessary to cross two major roads. This does create a barrier to the elderly, infirm and those with children in pushchairs.
- 4.1.4 In light of their comments Gorgemead recommend that the Litigation Authority reject this appeal as the application does not fulfilling the requirements of a minor relocation over 500m.

4.2 BOLTON LPC

- 4.2.1 Bolton LPC has carefully considered the Minor Relocation (over 500m) and is of the view that the relocation is not within the same neighbourhood.
- 4.2.2 The Committee urges the appeals Authority to reject the application.

Consideration

- 4.3 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.
- 4.4 It also had before it the responses to the Authority’s own statutory consultations.
- 4.5 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 4.6 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).’
- 4.7 The Committee noted that the applicant relied mainly on the fact that the PCT had granted an application for minor relocation from the proposed to the existing site in 2008. The Committee were mindful that each application is to be determined on its own merits and the Committee therefore proceeded to deal with the application by way of reconsideration of all the issues.
- 4.8 The Committee noted that the PCT neighbourhood containing the existing site is essentially Bolton town centre with boundaries as shown on a map, which had been circulated to the parties. The Committee further noted that the PCT considered the proposed site to be within a separate residential neighbourhood to the north. The Committee had regard to the applicant’s comments regarding neighbourhood and noted that they suggest the whole of Bolton could be considered as one neighbourhood. Given the size of Bolton the Committee were of the view that this would not be a reasonable definition. The Committee noted that the PCT neighbourhood appeared to be based on appropriate boundaries and had taken into account the demographics of the area. The Committee had regard to the comments by the PCT and Gorgemead about the different characteristics of the town centre compared to the residential area surrounding the proposed site. The Committee noted that the applicant had not disputed comments that Marsden Road and St Georges Road form a natural barrier, and did not find the applicant’s argument that a previous minor relocation had been granted to be sufficient to disturb the PCT neighbourhood. The Committee was not persuaded that residents in the town centre area would consider themselves neighbours of those to the north west. The Committee determined the move was outside the town centre neighbourhood and that Marsden Road/St Georges Road could reasonably be regarded as the critical boundary, whether or not a barrier, to that neighbourhood.

5 Decision

The Committee was of the view that the proposed change of premises was not a minor relocation. Accordingly the Committee dismisses the appeal.

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Sykes Chemist Ltd
Bolton PCT
Gorgemead Ltd
Bolton LPC