

Report of the Oral hearing

November 9th, 2009.

REF: SHA/15253

**APPEAL AGAINST BERKSHIRE WEST PCT DECISION
WITH REGARD TO THE RURALITY OF
SWALLOWFIELD**

1 Background

Following receipt of an application by Swallow Medical Limited for preliminary consent prior to inclusion in the pharmaceutical list at the Swallowfield Medical Practice, The Street, Swallowfield, Berkshire RG7 1QY, the PCT considered and determined whether Swallowfield was rural in character, in accordance with Regulation 31(2) of the NHS (Pharmaceutical Services) Regulations 2005 (as amended).

2 The PCT Decision

The PCT's decision letter dated 4th June 2009 states:

2.1 A site visit to the area had been undertaken. NHS Berkshire West had available to it a report prepared by the Agency, which included detailed information in respect of the area under consideration, and the representations and comments submitted by interested parties who were notified on this issue.

Consideration:

2.2 In considering this application, NHS Berkshire West took into account the NHS (Pharmaceutical Services) Regulations 2005 - Information for PCTs (which is an analysis of the rules of law and notes of guidance) and how this related to the determination of Swallowfield. (PCT quote extracts taken from this document under the heading 'What makes an area rural?')

2.3 In addition to the above, NHS Berkshire West also noted the following:

2.3.1 In accordance with Regulation 31(10) of the NHS (Pharmaceutical Services) Regulations 2005, as amended, where the question whether or not an area is rural in character has been determined by a PCT that question shall not again be considered in relation to that area or any part of it during the period of five years immediately following the date of the determination.

2.3.2 Swallowfield has not been formally classified under the NHS (Pharmaceutical Services) Regulations 2005; however, in 1992 it was classified as Rural (DC/5/92).

2.3.3 An application had been received from Swallow Medical Limited for preliminary consent for inclusion in the pharmaceutical list at the Swallowfield Medical Practice, The Street, Swallowfield, Berkshire RG7 1QY.

2.3.4 Following receipt of this application, NHS Berkshire West determined that the rurality of the Swallowfield area should be formally classified. The application from Swallow Medical Limited is now held pending this determination.

- 2.3.5 Local pharmaceutical and medical services.
- 2.3.6 Villages local to Swallowfield.
- 2.3.7 Representations received from interested parties with regard to the rurality of Swallowfield.
- 2.3.8 Statistical information on the population of Swallowfield.
- 2.3.9 Amenities, facilities and services available in Swallowfield including public transport.
- 2.3.10 Information taken from a site visit of the area.

Determination

- 2.4 In reaching a decision, NHS Berkshire West in particular considered the following points relating to the Swallowfield area:
 - 2.4.1 The population for the area is very low.
 - 2.4.2 There is a large amount of green space in the area.
 - 2.4.3 There is limited pavement and street lighting.
 - 2.4.4 There are no schools in Swallowfield. Primary education is provided in nearby Spencers Wood or Farley Hill and secondary education in Wokingham or Reading.
 - 2.4.5 There are very few amenities in the area and limited public transport.

Decision:

- 2.5 Having considered all the factors, NHS Berkshire West, in accordance with Regulation 1(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 determined that Swallowfield is 'Rural' in nature within the following boundaries:
 - 2.5.1 WEST: A33/M4 junction down the A33 to where the county boundary crosses the A33 south of Riseley.
 - 2.5.2 SOUTH: The county boundary south of Riseley village where it crosses the A33, following the county boundary to where it then crosses the A327 Eversley Road.
 - 2.5.3 EAST: A327 Eversley Road north from the county boundary along the A327 Reading Road until it meets the Parish Boundary of Arborfield, along that boundary to the junction of the urban area boundary of Shinfield at the River Loddon/Moor Copse.
 - 2.5.4 NORTH: Along the urban boundary of Shinfield from the River Loddon/Moor Copse to Junction 11 slip roads of the M4 and continuing westwards to the A33/M4 junction.
- 2.6 This boundary encompasses the villages of Swallowfield, Farley Hill, Riseley and Spencers Wood.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 1st July 2009, Berkshire Local Pharmaceutical Committee ("the appellant") appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The purpose of the appeal is simply the northern boundary of the rurality. The Committee feels that this boundary needs to be re-looked at in the light of the major developments that have taken place over the past 12 months in addition to what is planned in the future. The Wokingham District Local plan shows the Council's planning intentions to develop the Shinfield area. (attached excerpts from Wokingham Borough Council plans). In addition in a letter dated 1st October 2008 from Drivers Jonas LLP (Copy attached) to the council, there is greater detail of the facilities around Shinfield area stating the current existence of Schools, a Baptist church, British Legion Hall, a Parish Hall, two public houses, a Police Station and a doctors surgery. This documentation it is hoped shows that changes in population has already taken place and there are clear plans to develop the area further.
- 3.2 The view is that the Northern boundary should not go as far north as suggested but should run along the A327 to where it meets the Loddon River and run the course of the river until it meets the A33. The LPC would contend that the "pockets of Urbanality", as stated in the LPC's original submission, are found in Shinfield, Three Mile Cross and Spencers Wood and therefore should be excluded from the rurality determination as the original determination requested was the area of Swallowfield.

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 BARKHAM PARISH COUNCIL

- 4.1.1 Barkham Parish Council has an interest in this matter since the operating area of the Swallowfield Medical Practice includes the southern parts of Barkham. The Council would support the classification of the area as being Rural.
- 4.1.2 In view of the fact that the time scale for the potential developments in the Arborfield Garrison is up to 20 years, and also that the Swallowfield Medical Practice provides services to residents in Arborfield and the southern parts of Barkham, those areas should be classified as rural at least for the next ten years.
- 4.1.3 There have been large areas of development in recent months and there are many people who do not have transport and hence the inclusion of a pharmacy at the Medical Practice is a necessity.

4.2 THAMES VALLEY PRIMARY CARE AGENCY

Consideration

- 4.2.1 When considering the Classification of Swallowfield, the PCT was mindful of the NHS (Pharmaceutical Services) Regulations 2005 - Information for PCTs (which is an analysis of the rules of law and notes of guidance). (*PCT quote extracts.*)

4.2.2 In addition to the above, the PCT also considered submissions from interested parties and a report provided by TVPCA and in particular discussed the following points:

4.2.3 *Repeats paragraphs 2.3.1-2.3.10.*

4.2.4 Determination: *Repeats paragraph 2.4*

4.2.5 Decision: *Repeats paragraph 2.5.*

Letter of Appeal

4.2.6 In response to the letter from Berkshire Local Pharmaceutical Committee dated 1 July 2009, the PCT would like to make the following points:

The PCT would respond to paragraph 3.1 as follows:

4.2.7 The PCT notes that the Berkshire LPC has not appealed against the decision by the PCT that the area should be classified as a Controlled Locality, ie rural in nature but rather that the northern boundary requires amendment.

4.2.8 When considering the determination of Swallowfield the PCT had information concerning the area as a whole and in particular considered the following information:

4.2.8.1 *Repeats paragraph 2.3.5*

4.2.8.2 *Repeats paragraph 2.3.6*

4.2.8.3 *Repeats paragraph 2.3.2 - the PCT had information regarding this classification to hand.*

4.2.8.4 The PCT noted that in the previous Classification in 1992, the Determination of Rurality covered the following: Three Mile Cross, Shinfield, Arborfield, Arborfield Cross, Spencers Wood, Swallowfield, Farley Hill and Riseley.

4.2.8.5 Since that Classification, the PCT was aware of a number of changes in the area as a whole which have already taken place and the possibility of further development and this was taken into account when considering the Determination of Rurality at this present time, eg Arborfield Cross and Arborfield have now been classified in their own right and there has been considerable building in the Shinfield area.

4.2.8.6 Representations received from interested parties - this included representations from the LPC as follows:

'The LPC would like to draw the PCT's attention to the original determination made a number of years ago. Since then it would have to recognise the changes that have happened over the intervening period. Due to these developments there must be pockets of 'Urbanality' that have sprung up It is for the PCT to determine how much of an influence this has made in changing the character of the area from rural to urban. The LPC would contend that Swallowfield could be regarded as part of the ribbon development that comes out of Reading and could therefore be classed as a Reading suburb.'

4.2.8.7 Demographic information.

4.2.8.8 *Repeats paragraph 2.3.9*

4.2.8.9 *Repeats paragraph 2.3.10*

4.2.9 Thus the PCT is confident that the boundary arrived at in this current Determination is appropriate at this point in time, taking into account all the above factors. The PCT would also like to reassure the Berkshire LPC that full consideration was given to changes in the area which have already taken place and potential changes in the future.

4.2.10 The PCT also notes that although the representations made by the LPC in their original submission indicated that they felt that 'Swallowfield could be regarded as part of the ribbon development that comes out of Reading and could therefore be classed as a Reading suburb', in their Appeal letter, they do not disagree that the area should be classified as 'rural' but rather that the northern boundary of the rural area should be modified.

4.2.11 Indeed, the decision by the PCT that the area should be re-classified following the previous determination in 1992 was due to the fact that there had been changes in the area and it had been more than 5 years since it had been classified. As you will note, the PCT set the northern boundary as:

4.2.11.1NORTH: Along the urban boundary of Shinfield from the River Loddon/Moor Copse to Junction 11 slip roads of the M4 and continuing westwards to the A33/M4 junction.

4.2.12 Therefore you will appreciate that the PCT did take into account the developments in the Shinfield area and specifically excluded the urban area of Shinfield in its Determination.

The PCT would respond to paragraph 3.2 as follows:

4.2.13 The PCT would refer to their response above to paragraph 3.1. Full consideration was given to the changes which have taken place in the area and potential changes in the future when considering the Determination of Rurality and the boundary was set with full regard to those changes. In particular, the comments made by the LPC in their original representations were fully taken into account.

Conclusion

4.2.14 In conclusion the Agency would like to reiterate that the PCT has given careful consideration to all of the relevant issues raised in this case and is, at all times, mindful of the appropriate Regulations and is satisfied that this Determination of Rurality was dealt with by the PCT in accordance with these Regulations.

4.3 SWALLOWFIELD PARISH COUNCIL

4.3.1 The Parish Council supports the decision of West Berkshire PCT in its determination of the rurality of Swallowfield.

4.4 MANICHEM LTD

4.4.1 Manichem would reaffirm all the points previously made in their 45 day response letter (dated 28 November 08) in relation to the above, but have no further comments to make at this stage.

5 Preliminary 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. It also had before it the responses to the Authority’s own statutory consultations.
- 5.2 On the basis of this information, the Committee considered that it was necessary to hold an Oral Hearing, before determining the appeal.
- 5.3 The oral hearing panel was requested to recommend with reasons, the appropriate northern boundary for the controlled locality of Swallowfield.

6 The Panel was appointed and sat at The Mill House Restaurant and Hotel, Old Basingstoke Road, Swallowfield, Berkshire RG7 1PY on the 9th November 2009. A list of those present is attached as **Appendix 1**. On the previous day, 8th November 2009, the Panel conducted an extensive site visit of Swallowfield and the surrounding areas. For the assistance of the Committee a plan of the area is attached **Appendix 2** showing edged purple the approximate area defined by the Berkshire West Primary Care Trust as being rural in nature. The area edged with the colour green on this plan is the Berkshire LPC’s proposed definition of the area to be classified as rural. Also to assist the Committee are aerial maps **Appendix 3** with the LPC’s proposed northern boundary shown by a red line on the black and white aerial map.

7 The Panel’s findings so far as they are material are set out in the Consideration section below. In addition, the Panel had before them information obtained from the website of the Swallowfield Parish Council.

8 The Chairman at the opening of the Hearing dealt with a preliminary point. It appeared that the Swallowfield Medical Practice had made a representation to the Family Health Services Appeal Unit on the 4th August 2009 by letter **Appendix 4** in relation to the determination of rurality in respect of Swallowfield although the Family Health Services Appeal Unit could find no trace of having received this letter. Consequently, there was some doubt as to whether the Practice could be heard at the Hearing. The Chairman decided that as there was some doubt as to whether the letter had been received or not by the Family Health Appeal Unit it was important in Hearings such as this to listen to as much evidence as possible, particularly in this case from doctors practicing in the area, and decided to allow the doctors to give evidence at the Hearing. No party objected to this.

9 History.

- 9.1 Swallowfield has descended from the time of the Saxons and Normans and was named in the Domesday Book (then known as Stonesfelt). In 1535, King Edward III granted Swallowfield to his daughter, Princess Isobel, and Swallowfield Park was used for breeding the King’s horses.
- 9.2 At one time Swallowfield had four churches. During the 18th and 19th Centuries, farming was the main reason for the population growth and this led to development (and subsequent demise) of other businesses. At one time there were apparently 11 public houses, 3 post offices, 3 butchers’ shops and 3 coal merchants – people did not have to go to Reading. Farmers did, however, take their livestock to market in Reading.
- 9.3 The Parish of Swallowfield was formed by Act of Parliament in 1894 and the Villages of Farley Hill, Riseley and Swallowfield have since united and there is an active Parish Council.

10 Additional evidence given at the Hearing.

- 10.1 **BERKSHIRE WEST PRIMARY CARE TRUST (Applicant) Represented by Ms Sarita Rakhra.** Ms Rakhra said that on the 17th July 2008 the PCT received an application from Swallow Medical Limited for Preliminary Consent for Inclusion in the Pharmaceutical List at Swallowfield Medical Practice.
- 10.2 Local views were invited as part of the formal consultation process, as well as the LPC and the LMC.
- 10.3 Representations/comments were received from (a) Swallowfield Parish Council (b) Barkham Parish Council (c) Manichem Limited and (d) Berkshire LPC.
- 10.4 Swallowfield Parish Council confirmed that it considered Swallowfield to be rural in character due, in part, to the following factors;
- Environmental
- Size of the community
- Population density
- Transportation
- Other facilities
- Housing
- 10.5 Barkham Parish Council supported the classification of the area being rural.
- 10.6 Manichem Limited considered Swallowfield to be rural due to lack of facilities and amenities.
- 10.7 The LPC drew the PCT's attention to the original determination made in 1992. Since then the PCT would need to recognise that changes had taken place over the intervening period and noted that there were pockets of "urbanity" due to developments and it was for the PCT to determine how much of an influence this may have made in the character of the area from rural to urban. The LPC contended that Swallowfield could be regarded as part of the ribbon development that comes out of Reading and could therefore be classed as a Reading suburb.
- 10.8 In 1992 the Berkshire Health Authority classified Swallowfield as rural in character and the defined boundaries (i.e. the Parish of Swallowfield) included Riseley, Farley Hill, Shinfield, Spencers Wood and Arborfield (excluding the Garrison). It also included Three Mile Cross and Stanford End to the west of the A33. Some of the areas have been re-classified and new boundaries have been formed.
- 10.9 The PCT re-considered the factors below to reach a decision to determine that Swallowfield is rural within the boundaries of Swallowfield, Riseley, Farley Hill and Spencers Wood :-
- Environmental – there is a large amount of green space and limited pavement and street lighting.
- Population of Swallowfield – the population size is very low 2628 (2001 census). There is also the distance between settlements.
- There are no schools in Swallowfield – primary education is provided in nearby Spencers Wood or Farley Hill and secondary education is in Wokingham and Reading.

Population density.

There are limited facilities and amenities.

Limited public transport – it is noted that there are no rail stations close to Swallowfield and the nearest being in Reading and Wokingham both of which are over 5 miles away.

Limited bus service – 17 buses each way from 6.30am to 11.00pm (Weekdays), Saturday 8 buses each way between 9.00am and 3.00pm and Sunday and Public Holidays 4 times between 11.00am and 5.00pm.

- 10.10 The PCT wishes the Panel to note the following information in response to the appeal from the LPC to define the northern boundary of the rurality in their letter of the 1st July 2009 :

Wokingham District Plan – the Council's intentions to develop the Shinfield area. The PCT believes that development in Shinfield should not impact on Spencers Wood. The PCT excluded Shinfield in recognition that there was planned development. The Wokingham Local Development Scheme - July 2008 – 2011 – in referring to mixed developments around the area of Shinfield. Spencers Wood and Three Mile Cross to provide 2,500 dwellings requires separation between settlements to be maintained. The character of the area is worthy of retention.

Drivers Jonas LLP refers to Shinfield as a modest development.

- 10.11 *In response to questions.*
- 10.12 *There is a railway station at Mortimer – 4 miles away – which connects Basingstoke and Reading.*
- 10.13 *The Pharmaceutical Needs Assessment is being prepared at the present time. Questionnaires have been sent out. The PNA covers the whole of the area up to the M4.*
- 10.14 *The area has more elderly persons than the national average.*
- 10.15 **BERKSHIRE LOCAL PHARMACEUTICAL COMMITTEE (Appellant) Represented by Mr Ralph Higson.** Mr Higson firstly thanked the Litigation Authority for calling an Oral Hearing so that the situation could be clearly seen on the ground rather than just on a map.
- 10.16 Mr Higson then sought to address the Panel on the definition of Rural using the new Guidance issued by the Department of Health in September of this year. The Chairman advised Mr Higson that the new Guidance takes into account the changes introduced on the 17th September 2009 by the 2009 Regulations and the Guidance indicates that PCT's should apply the new Regulations to all decisions made on, or after the 17th September 2009. Since the decision in this case was made on the 4th June 2009 neither the new Regulations nor the new Guidance applied to this appeal and Mr Higson was told that the Panel could not consider any comments he wished to make on the definition of "Rural" as may be contained in the Revised 2009 Guidance.
- 10.17 Mr Higson said that the LPC's original grounds for appeal were based on the unclear definition of the northern boundary presented by the PCT in its decision letter. Mr Higson referred to page 13 of the bundle and quoted the PCT's northern boundary *"..Along the urban boundary of Shinfield from the River Loddon/Moor Copse to Junction 11 slip roads of the M4 and continuing westwards to the A33/M4 junction.."*. At the time the PCT did not provide any map to clarify the boundaries. The

description of the northern boundary indicated that the boundary ran along the route of the M4. The map provided by the PCT latterly with the appeal papers makes it much clearer and now excludes Shinfield. Therefore Shinfield is now urban.

- 10.18 It was without the PCT map that an alternative northern boundary was suggested because of all the building work that was proposed within the northern part of the boundary and that it was the rurality in respect of Swallowfield and surrounds as stated in the 1992 determination page 36 of the bundle. As noted in the PCT submission at page 32 of the bundle Arborfield and Arborfield Cross have now been classified in their own right. So Swallowfield was being determined in its own right by the PCT.
- 10.19 “In respect of Swallowfield”. Mr Higson said “What does this mean?”. Mr Higson then referred to the dictionary definition of “respect” and out of the definitions obtained he presumed that the definition we would be using would be “..A *particular aspect, feature or detail*..”. Therefore, the determination should be regarding a particular aspect, feature or detail of the village of Swallowfield only and not “Swallowfield and Surrounds” (the 1992 determination). The PCT’s boundary determination was then widened to include not only the village of Swallowfield, but Farley Hill, Riseley, Three Mile Cross and Spencers Wood. The LPC would contend that was not the PCT’s original instruction and therefore a new boundary should be determined around Swallowfield and further determinations should be requested for the villages of Farley Hill, Riseley and Spencers Wood as the PCT did with Arborfield and Arborfield Cross. That is why Shinfield, Spencers Wood, Farley Hill, Riseley and Three Mile Cross should be excluded from this determination and be separately determined.
- 10.20 In summary the LPC appeal arose from the lack of a clear map which should have accompanied the original PCT determination decision letter and what the PCT was requesting as Swallowfield should not have included the surrounds as they are separate and discrete settlements.
- 10.21 ***In response to questions.***
- 10.22 ***Mr Higson said that the LPC’s northern boundary of the controlled area was the green line indicated on the plan Appendix 2.***
- 10.23 ***It was put to Mr Higson that Swallowfield does include Farley Hill. Mr Higson said that it should have been just Swallowfield for the application and not those other places. It was illogical inserting Riseley and Farley Hill.***
- 10.24 ***Mr Higson agreed that as the crow flies Farley Hill was further from Swallowfield than Spencers Wood.***
- 10.25 Dr William Beacham on behalf of the Swallowfield Medical Practice said ; ***Everyone around here basically south of the M4 motorway are the same community. The churches have merged as one Ecclesiastical Parish. There are two primary schools to which children from all the villages go. The secondary school will be shut next year. It is very much a single community.***
- 10.26 **SWALLOWFIELD MEDICAL PRACTICE (Interested Party) Represented by Mr Andy Button (Practice Manager) and Doctors William Beacham and Helen Hegarty.** Mr Button said that Swallowfield Medical Practice (SMP) contends that the whole area identified by Berkshire West Primary Care Trust (PCT) in its determination as rural in nature, i.e. Swallowfield, Spencers Wood, Ryeish Green and Three Mile Cross (the Area) is not at all urban as suggested by the LPC. The reasons for this are many and varied.

- 10.27 **Emergency Services.** There are no emergency services based in the Area. All such services are the other side of the M5 (distances quoted are from Spencers Wood being in the centre of the Area):
- 10.28 **Police** – the nearest police station is based in Reading (about 5 miles away).
- 10.29 **Ambulance** – the nearest ambulance services are based in Reading (about 5 miles away).
- 10.30 **Accident and Emergency Coverage** – the nearest accident and emergency centre is at the Royal Berkshire Hospital (RBH) in Reading which is approximately 5 miles away. The RBH is also the nearest hospital.
- 10.31 The above lack of public services is not consistent with an urban community where all of the above would be within the settlement environs and therefore this type of public amenity coverage is rural in nature.
- 10.32 **Facilities. Sports Facilities** – no sports centre, gym or public swimming pool. The closest recognised leisure centre is located in Lower Earley approximately 6 miles away. **Entertainment Facilities** – there are no theatres or cinemas within the Area – you will have to travel 5 miles across the M4 to the centre of Reading to reach a theatre or cinema. **Supermarket** – there are no supermarkets or shops selling clothes or shoes in the Area. The nearest supermarket is approximately 4 miles away across the M4 in Lower Earley.
- 10.33 **Transport services. The local bus** is a rural one, not linked to the urban one offered north of the motorway. There was an urban style bus service offered in the past but it was withdrawn as it was said to not be sustainable in the rural setting. **Railway** – the nearest railway station is approximately 4 miles away in Mortimer. However, there are no public transport links to Mortimer without going into the centre of Reading. **Quality of Roads** – the overall quality of the roads within the villages of Swallowfield, Spencers Wood and Three Mile Cross is adequate. However, there are many areas where there are no pavements, kerbs or street lighting, reflecting the rural nature of these villages. Whilst the main roads are maintained to a high standard many of the roads leading from these are of lower quality and repairs are sometimes patchy and flooding is a problem.
- 10.34 **Planning Applications Pending.** The Wokingham 10 year plan has outlined proposed further development in Shinfield and some areas of Three Mile Cross. At this time there are no major planning applications that have been accepted for new housing. The PCT recommendation for the boundary of the Area has already excluded the Shinfield area where building has taken place over the past few years. There are a small number of infill developments occurring but there has been no major building for 2 years now.
- 10.35 **Open Countryside.** The entire villages of Swallowfield, Spencers Wood and Three Mile Cross are surrounded on all sides either by open land which is being used for agricultural purposes or by uncultivated woodland. Open countryside can be reached from any part of any of the villages within five minutes walk. The overall feeling and general impression is that the countryside is a definitive part of the village and that the two are symbiotically linked.
- 10.36 Mr Button produced photographs **Appendix 5** to illustrate how much green space there is around the villages.
- 10.37 **Number of Schools** – there are two primary schools, these are very much village based and only have one class per year group. There will shortly be no secondary school in the area as it is closing in 2010 due to lack of local pupils.

10.38 **Number of Churches** – there is a high number of churches per head of population, each of which serves an individual village. This further supports the fact that the area is rural and not a ribbon of urban development.

10.39 **Environmental factors such as Land Use.**

Main Use of land in the Villages. The main usage of land within the village is for low-density housing and roadways with plenty of open spaces for recreational use and some agricultural use.

Agricultural Use of Land in the Villages. The majority of the land within the proposed area is agricultural, owned by only a handful of local landowners. Many of the farms are tenants of these landowners further giving to the rural nature of the area concerned.

10.40 **Size and Patterns of Settlements including Density and Type of Housing.** The settlements are very much based along the road system within the individual villages, although there are a number of smaller closes running off the main roads. The feel of the villages being rural is heightened by this type of spread of housing and indeed that many of the houses have names and not numbers.

10.41 **Employment (agricultural).** There is very little employment within the area of Swallowfield, Spencers Wood and Three Miles Cross. Any employment available is centred mainly around the farming community. Most people living in the area need to travel into the urban areas such as Reading or London for work.

10.42 **SUMMARY.** In our opinion, the Area which includes the villages of Swallowfield, Spencers Wood and Three Miles Cross clearly demonstrates all the necessary requirements to be defined as a rural location as follows :

Open countryside. We would estimate this to be less than five minutes walk from any location within the villages.

There is a complete absence of any major industry, factories, manufacturing, consumerism and emergency services in the Area.

There are no buildings over the height of two or three stories.

The villages are surrounded on all sides by open land and farm land.

There are areas of the villages without street lights, kerbs and pavements.

There are a number of small local shops but there are no shops selling clothes or shoes.

The villages are completely surrounded by open land with significant distances between the villages and hamlets.

The public transport is deemed rural and many parts receive no transport at all.

There are no recreational facilities available.

The only secondary school is closing due to no longer being viable due to declining pupil numbers.

10.43 ***In response to questions.***

10.44 ***Mr Button said that there were very small business units in the area mainly linked to the farms.***

10.45 **Mr Button said that the Farley Hill primary schools rely on Spencers Wood for its population. Arborfield has its own primary school.**

10.46 **Dr Hegarty said that the developments proposed for two sites in Wokingham (north and South), Arborfield Cross and Shinfield would be completed before there was any development in the Area.**

10. Closing Statements.

10.1 **BERKSHIRE WEST PCT.** Ms Rakhra thanked the Panel and handed in a copy of the Wokingham Borough Local Development Framework – Submission Core Strategy (August 2008) just for further information should the Panel require it. (**Appendix 6**).

10.2 **SWALLOWFIELD MEDICAL PRACTICE.** Mr Button thanked the Panel for hearing what they had to say in the light of the missing letter of the 4th August 2009. He said that his only final comment was that when one looks at the coloured version of the aerial photograph it is indisputable that the area is very green.

10.3 **BERKSHIRE LPC.** Mr Higson thanked the Panel for coming to Swallowfield and looking at the area.

11 Consideration.

11.1 Regulations 31 and 32 of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) apply to the determination of rurality. The Panel was mindful of the pharmacy guidance issued by the Department of Health (Information for Primary Care Trusts (Control of Entry) (Revised February 2007).

11.2 The section dealing with the determination of rurality is set out in Paragraph 5.7 onwards of the Guidance. The Panel in its site visit noted the factors which might be considered which are set out in Paragraph 5.12. Paragraph 5.13 however states that none of the factors will automatically determine the matter. That will remain a question of judgment. The Panel, therefore, when undertaking its site visit, and considering the evidence, weighed in the balance all the factors suggested.

11.3 The word “rural” is not defined in either the Regulations or the Guidance. In the Concise Oxford Dictionary it is said, “*In, of, suggesting, the country (opposite urban), pastoral or agricultural*”. The Panel therefore gave the word its everyday meaning when considering the community which is the subject of the appeal.

11.4 Swallowfield and surrounds were classified on the 10th March 1992 as rural in character and therefore a controlled locality. The extent of that classification is shown on the map Appendix 2 hatched with the colour brown. Since that classification the areas of Arborfield Cross and Arborfield have been re-classified in their own right.

11.5 The PCT in coming to its present decision recognised that considerable building had taken place in the Shinfield area since the 1992 decision and consequently had excluded Shinfield from its decision. Therefore the area the subject of the appeal is that edged with the colour purple on the map Appendix 2 (the Appeal area).

11.6 The Panel in undertaking its site visit had to assist it the large map Appendix 2 and the map at page 41 of the bundle of primary evidence.

11.7 Swallowfield and its surrounds consists of the settlements or villages of Riseley, Farley Hill, Spencers Wood and Three Mile Cross (the Appeal area). These are all situated south of the M4 Motorway and between the A33 on the western side and the A372 on the eastern side. The aerial maps Appendix 3 provide the Committee

with good aerial views of the appeal area. Passing through the appeal area north to south is the Old Basingstoke Road B3349 and it can clearly be seen from the aerial maps that the appeal area is surrounded on all sides by open and cultivated land together with woodlands. Indeed, within a few minutes one can walk from any location within the appeal area to open countryside. On page 5 of the bundle of primary evidence (Land Use Statistics) the total area of all land types for Swallowfield is shown as 14,624.94 m² with the area of green space being shown as 12,907.54 m².

- 11.8 The Panel were told in evidence that much of the land is owned by local landowners and that many of the farms are tenants of these landowners.
- 11.9 The Committee will see from the aerial maps the various settlements. The Panel found during its site visit that these settlements are based along a road system in a somewhat ribbon development with, in a few cases, small closes running off the road system. The existing housing is a mixture of older village type properties with more modern properties in the Closes. The Panel found that the roads, apart from the main A33 and A372 roads, the roads within the appeal area were village type roads which, although being adequate, in many places there were no pavements, kerbs or street lighting.
- 11.10 It would appear that each settlement has its own church but again in evidence Doctor William Beacham told us that all the Churches had merged into one Ecclesiastical Parish and the clergy visit the village churches on a rota system to conduct services.
- 11.11 Employment in the main is centred around the farming community. It is understood that there is little other employment and most people living in the area need to travel into either Reading or London to work.
- 11.12 It is understood that there are two primary schools which draw their pupils from the appeal area and one secondary school which it is understood will close in 2010 due to lack of pupils.
- 11.13 On the question of facilities it is understood that there are no sports facilities within the appeal area the nearest being at Lower Earley 6 miles away. There are no entertainment facilities in the appeal area, again, the nearest being some five miles way in Reading which is north of the M4. Whilst there are several shops, a pharmacy and a petrol station in the Spencers Wood area the nearest supermarket is approximately 4 miles away north of the M4 at Lower Earley. Any major purchases such as clothes, shoes, etc would have to be made at Reading some 5 miles away.
- 11.14 We were told by Mr Button of the Swallowfield Medical Practice that the emergency services for the appeal area e.g. Police, Fire, Ambulance and A & E cover are 4/5 miles away on the northern side of the M4.
- 11.15 As far as public transport is concerned the operation of buses is set out at Paragraph 10.9 and Page 8 of the bundle. The nearest railway station is Mortimer some 4 miles away but there is no public transport link.
- 11.16 The population of Swallowfield at the time of the 2001 census is said to be 2628.
- 11.17 The Committee is referred to the various planning documents sent with the report and also the comments made in evidence. It is quite clear that there will be some development south of the M4 which is focused on the expansion of three distinct settlements : Shinfield, Three Mile Cross and Spencers Wood. However, a strategic gap between Ryeish Green and Shinfield is to be retained. No final decisions have been made and these matters still remain part of the Wokingham Core Strategy.

- 11.18 As previously mentioned, the PCT in coming to their decision had taken account of the development which has already taken place at Shinfield and consequently, quite rightly, had excluded Shinfield from their decision.
- 11.19 The LPC's main argument at the appeal was in relation to the line of the northern boundary of the appeal area. Mr Higson sought to restrict the northern boundary along the line of the River Loddon (marked in green on the map Appendix 2) on the basis that there were pockets of urbanity to be found in Shinfield, Three Mile Cross and Spencers Wood. The Panel do not accept Mr Higson's argument on this point, other than Shinfield which has been recognised.
- 11.20 Mr Higson also considered that the appeal should be limited purely to Swallowfield and not to include Riseley, Farley Hill, Shinfield, Spencers Wood and Three Mile Cross since this was not the PCT's original instruction. On this point the Panel feel that although the application description is shown as Swallowfield the plan at page 41 is quite clear in that it delineates Swallowfield and surrounds in green. Consequently the Panel take the view that where the description might not be considered sufficient the plan clearly shows the area involved and in the circumstances will prevail. Therefore, the Panel did not accept Mr Higson's contention that the application and appeal should be purely limited to Swallowfield.
- 11.21 The Swallowfield Medical Practice supported the PCT decision.
- 11.22 The Panel asked itself what real changes had taken place since the Decision of 1992. Since 1992 there has been quite considerable development of Shinfield which the PCT has recognised and consequently have excluded Shinfield from their current decision. There has also been some development within the appeal area by the construction of small Closes and sporadic infilling.
- 11.23 The Panel did not feel that the development which had taken place had changed the nature of the rurality of the appeal area. The appeal area is surrounded by open countryside and woodlands. Everything about the social fabric of the community indicated the appeal area is rural – from the absence of any major industry, factories, manufacturing and emergency services; lack of street lighting, kerbs and pavements in areas; the rurality of the public transport and no recreational facilities.
- 11.24 The Panel therefore having considered the matter most carefully concludes that they found nothing to interfere with the Berkshire West Primary Care Trust's decision of the 4th June 2009 to determine the Appeal area as rural in nature within the boundaries defined by the Primary Care Trust. They therefore take the view that the area shown on the map **Appendix 6** and edged with the colour blue is rural and should retain its controlled status.

12 **Recommendation.**

The Panel members unanimously recommend that the appeal area shown on the plan Appendix 6 and thereon edged with the colour blue should be a controlled locality and that the appeal by the Berkshire Local Pharmaceutical Committee be dismissed.

Michael J Sidey (Chairman)

November 13th, 2009.

Appendix 1

Attendance List

Panel

Michael J Sidey Chairman

Mrs Carol Dorking

Mr Eric Richards

Appellant

Berkshire LPC Mr Ralph Higson

Berkshire West PCT Ms Sarita Rakhra

Interested Parties

Swallowfield Medical Practice Mr Andy Button – Practice Manager

Doctor William Beacham and Dr Helen Hegarty