23rd February 2010

REF: SHA/15565

APPEAL AGAINST NOTTINGHAMSHIRE COUNTY PCT DECISION TO REFUSE AN APPLICATION BY AVICENNA SANATIO PHARMA LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT ASSARTS FARM MEDICAL CENTRE, 8 UPMINSTER DRIVE, NUTHALL, NOTTINGHAM NG16 1PT

1 The Application

By application dated 26th August 2009, Avicenna Sanatio Pharma Ltd ("the Applicant") applied to Nottinghamshire County Primary Care Trust ("the PCT") for inclusion in the pharmaceutical list at Assarts Farm Medical Centre, 8 Upminster Drive, Nuthall, Nottingham NG16 1PT. In support of the application it was stated:

1.1 The Neighbourhood: the neighbourhood is bounded to the north and west by the A6002 Woodhouse Way, to the east by the A610 and to the south by Broxtowe Country Park.

1.2 Evidence supporting area as a separate neighbourhood: the area as defined above has its own local amenities including a Post Office, supermarket, petrol station, public house, restaurant and a GP surgery as well as two primary schools, allowing residents to make use of these amenities as part of the daily fabric of their lives. There are clear boundaries to the defined neighbourhood such as dual carriageways separating the defined area from neighbouring estates. The defined neighbourhood is also newly built compared to the surrounding areas. Also the defined neighbourhood consists of distinctly different socio economic groups namely, Groups 1, 11, 111, N&M compared to Groups IV and V in the surrounding areas. The neighbourhood is only easily accessible via Mornington crescent.

1.3 Inadequacy of existing services: ONS statistics state the ward of Nuthall and Strelley has a population of c4715 and the majority of these residents live in the defined neighbourhood. There are currently no pharmaceutical services provided directly to the neighbourhood and due to the clear physical boundaries stated earlier residents in the defined neighbourhood have to travel outside the neighbourhood to access pharmaceutical services. This may pose problems for people with children or the elderly who may not easily be able to travel outside of the defined neighbourhood.

1.4 Clearly there is a gap in the provision of pharmaceutical services in the defined neighbourhood and this gap in provision should be fulfilled by having a pharmacy as proposed by ourselves thus removing the need for the local residents as well as people working within the area to travel outside the neighbourhood to access pharmaceutical services. The medical centre has recently extended its opening hours due to patient demand, this demand will be undoubtedly reflected in the need for pharmaceutical services.

1.5 The Applicant is aware from a previous application made, that there is overwhelming support for a pharmaceutical provision in this neighbourhood from the local population who view is a highly desirable and necessary.

1.6 The Applicant is aware that the PCT has previously granted full consent for a new pharmaceutical contract within this neighbourhood, having viewed this as being necessary or desirable. However the applicant failed to begin providing services within the stipulated time frame, despite having ample opportunity to do so.

1.7 The Applicant has been working closely with the partners at the medical centre and has established a good working relationship with them, As a result of these discussions the Applicant is able to confirm that they have secured a commercial agreement with them to begin trading a pharmacy on site as soon as the Applicant is in possession of the relevant approval from the PCT. For this reason the Applicant is applying for full consent to begin providing the pharmaceutical service the neighbourhood needs and deserves. The Applicant hopes to commence trading within 3 months of full consent being granted.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 24th November 2009 states:

2.1 An application within the same neighbourhood has recently been approved at the Joint Pharmacy Applications Advisory Committee and therefore the committee considered the provision of pharmaceutical services in the neighbourhood to be adequate making the granting of an additional contract neither necessary nor desirable.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 17th December 2009, the Applicant appealed against the PCT's decision. The grounds of appeal are:

3.1 All parties agree that it is necessary or desirable to have a pharmacy in this neighbourhood, as evidenced by previous applications which have been granted (2007).

3.2 The PCT's reason for not granting the application was that preliminary consent had been granted to another party, namely AV Healthcare Ltd. The Applicant contends that the application by AV Healthcare Ltd is purely a blocking application and AV Healthcare Ltd has no intention of providing pharmaceutical services within the neighbourhood. This is evidenced by the history of the applications made by AV Healthcare Ltd.

3.3 AV Healthcare Ltd had applied for preliminary consent at Upminster Drive in March 2007 and full consent was applied for and granted in November 2008. An extension to the 6 month time limit to commence trading was obtained and consent for commencing trading was given until 26th August 2009.

3.4 However, on the 27th July 2009, AV Healthcare made a fresh application for preliminary consent for the same site a full month before their full consent had even expired. This is clearly indicative of a blocking application. The Applicant contends that AV Healthcare Ltd have had ample time and opportunity to secure premises and commence trading at the site applied for yet chose not to do so and furthermore submitted a preliminary consent application in a crude attempt to prevent any other party from providing pharmaceutical services to the neighbourhood who both need and deserve such a service. The Applicant further believes that had AV Healthcare Ltd truly intended to trade a pharmacy in a short period of time, then the fresh application would have been made for full consent as opposed to preliminary consent. The fact that the application made was for preliminary consent indicates that AV Healthcare Ltd are not serious about their stated intention to trade a pharmacy at this site.

3.5 The Applicant applied for full consent to provide pharmaceutical services at Upminster Drive on 26th August 2009. This application was made on the basis of having secured appropriate premises and being in a position to begin providing services within a short period of time. This was four weeks after the application by AV

Healthcare Ltd. Had the application by AV Healthcare Ltd been made at the time their consent expired then these two applications would have been submitted at effectively the same time. In any event, the consultation period for both applications therefore overlapped one another and hence all concerned parties were aware that there were two applications for the same site submitted to the PCT, one for preliminary consent (AV Healthcare Ltd) and the other for full consent (Avicenna Sanatio Pharma Ltd). It is the Applicant's opinion that for the benefit of the residents within the neighbourhood in terms of giving them access to a pharmaceutical service that the applications should have been heard together by the PCT and for which provision to do so exists in the statutory regulations, especially in light of the fact that the applications have been submitted for the same site and within a very short time period of each other.

3.6 A request for the applications to be heard together was made to the PCT both by the local GP and the Applicant citing the appropriate regulations however the Applicant did not receive any formal communication as to whether the PCT were to consider the applications together or not and for that matter any reason for not doing so. The Applicant contends that the PCT should have delayed the consideration of the application by AV Healthcare and considered both applications together. This would have resulted in a decision in the best interests of the residents and patients of Nuthall.

3.7 Furthermore the application by AV Healthcare Ltd was heard by the JPAAC (Joint Pharmacy Applications Advisory Committee) on the 16th October 2009. This was the last day that comments could be presented to the PCT for consideration by the JPAAC with regard to the application by AV Healthcare Ltd and hence a decision was made with regard to the application before potentially all comments had been received thereby going against the PCT's own published procedures.

3.8 The site at Upminster drive (purpose built retail space adjoining the health centre) is the only commercially available site from which to operate a pharmacy. AV Healthcare Ltd over a period of over two years has not been willing to secure this site albeit having every opportunity to do so. However the Applicant has agreed commercial terms for the lease of the site and hence our application for FULL consent. The rest of the neighbourhood is primarily residential and as such it is highly unlikely that AV Healthcare Ltd will be able to secure a property, and obtain relevant planning consent within the 6 months they have to apply for full consent at a named location within the neighbourhood. Any other site in the neighbourhood would not provide ease of access to patients within the area, this adds further weight to the argument that the application by AV Healthcare Ltd is purely a blocking application.

3.9 The Applicant's application has the full support of the local GP and the Applicant has secured premises at the only available site within the neighbourhood which is also the site applied for in both applications. The Applicant would be able to provide a high quality, easily accessible pharmaceutical service to the neighbourhood which is clearly needed within a short period of time and therefore respectfully ask the appeals panel to reject the decision made by the PCT and to grant their application.

3.10 The Applicant would request that the committee considers the evidences and submissions from both their application and the application made by AV Healthcare Ltd in order to arrive at its conclusion.

3.11 The Applicant therefore respectfully requests that the committee grants their application for full consent for inclusion on the pharmaceutical list at Upminster Drive.

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 NOTTINGHAMSHIRE LPC

4.1.1 According to information received by the PCT there is a contractor opening on the 25th January 2010. When this opens the LPC feel there will be adequate provision.

4.2 BURROWS AND CLOSE LTD

4.2.1 The appellant alleges that AV Healthcare Ltd applied for a preliminary consent application a month before theirs purely as a blocking tactic. This allegation has proved unfounded as AV Healthcare Ltd has been providing pharmaceutical services from this site since 25th January 2010.

4.2.2 The application by the appellant is therefore neither necessary nor desirable as pharmaceutical services in the neighbourhood are adequate.

4.3 NOTTINGHAMSHIRE COUNTY PCT

4.3.1 In respect of the new pharmacy application made by AV Healthcare Ltd, the PCT can now confirm that the application process has now been completed by the PCT.

4.3.2 AVB Healthcare Ltd t/a Nuthall Pharmacy commenced trading at Unit 1, 2 Upminster Drive, Nuthall, Nottingham on the 25th January 2010. Therefore, the committee considered the provision of pharmaceutical services in the neighbourhood to be adequate making the granting of an additional contract neither necessary nor expedient.

4.3.3 Omega Chemist which is the nearest pharmacy to the proposed site only provides one Enhanced Service which is Pharmacy First. They are commissioned to provide the following Enhanced Services but do not provide this service:- EHC, Chlamydia Screening / Treatment, C-Card, Pregnancy Testing, Supervised Consumption, Needle Exchange, Palliative Care, Weight Management, New Leaf, Care Homes, Not Dispensed and Healthy Living.

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 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 that the neighbourhood as defined on the PCT map, and proposed in the application, is not disputed and therefore accepted that neighbourhood for the purposes of this appeal.

5.7 The Committee noted that an application by AV Healthcare Ltd had been granted with confirmation from the PCT that this pharmacy commenced trading at 2 Upminster Drive on 25th January 2010. The Committee therefore took the view that it was not necessary to grant the current application.

5.8 The Committee noted that the appeal centred on the application by AV Healthcare Ltd being a blocking application. Having noted that AV Healthcare Ltd had commenced trading, the Committee was mindful that no information has been provided by the applicant to suggest that the granting of a second contract is expedient to secure the adequate provision of pharmaceutical services in the neighbourhood.

5.9 The Committee had regard to the appellant's comments regarding the PCT process however this is not a matter which could be remedied by the Committee.

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:

Avicenna Sanatio Pharma Ltd
Nottinghamshire County PCT
Burrows and Close Ltd
Nottingham LPC