

2<sup>nd</sup> February 2010

**REF: SHA/15518**

**APPEAL AGAINST WIRRAL PCT DECISION TO REFUSE AN APPLICATION BY COMMUNITY PHARMACIES (UK) LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE IMMEDIATE VICINITY OF THE NEW MEDICAL CENTRE DEVELOPMENT, THE WARRENS NURSERY, THINGWALL ROAD EAST, WIRRAL CH61**

**1 The Application**

By application dated 29<sup>th</sup> June 2009, Community Pharmacies (UK) Ltd (“the Applicant”) applied to Wirral Primary Care Trust (“the PCT”) for preliminary consent prior to inclusion in the pharmaceutical list in the immediate vicinity of the new medical centre development, The Warrens Nursery, Thingwall Road East, Wirral CH61. In support of the application it was stated:

- 1.1 This application is both necessary and desirable in order to secure within the neighbourhood from which the applicant intends to provide the services, adequate provision of pharmaceutical services.
- 1.2 The proposed neighbourhood is bounded by:
  - 1.2.1 Northern boundary - Thingwall Road East
  - 1.2.2 Eastern boundary - Barnston Road
  - 1.2.3 Southern boundary - Heswall Mount, Ryland Park, Gwendiline Close and Barnsdale Avenue
  - 1.2.4 Western boundary - Pensby Road & Whaley Lane.
- 1.3 A map of the neighbourhood is included.
- 1.4 The proposed neighbourhood is a residential area and includes a school, retail units and community facilities.
- 1.5 The proposed pharmacy will be at the new medical centre development to be constructed on The Warrens Nursery, Thingwall Road East.
- 1.6 The new medical centre will bring together the whole patient list of the West Wirral Group Practice which is currently split across 3 sites. Patients will benefit from modern premises for delivery of NHS services and this will create a significant increase in demand for pharmacy services in the proposed neighbourhood.
- 1.7 With there only being one pharmacy in the neighbourhood there is limited choice for the patients using the new medical centre.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 23<sup>rd</sup> October 2009 states:

- 2.1 Prior to the meeting the Committee had visited the proposed premises and surrounding area, noting the current provision of pharmaceutical services. The

Committee also took due note of the existing medical services, the housing stock and the geography of the area.

- 2.2 This application was considered under Regulation 12 of the NHS Pharmaceutical Service Regulations 2005 (as amended).
- 2.3 The neighbourhood was agreed as follows:
- 2.4 Cornelius Drive, Wimbourne Avenue taking a line to Barnsdale Avenue, Barnston Road (to include properties on both sides, from mini roundabout, Pensby Road along Thingwall Road East (to include properties on both sides) Whaley Lane, Oakley Road, Marlston Avenue (including cul-de-sacs Daleside Close and Leafield Close), taking an imaginary line to the other side of the housing (to include Exmoor Close) joining back up with Cornelius Drive. The Committee felt that this neighbourhood appropriately defined the neighbourhood known as Thingwall.
- 2.5 The Committee undertook a full review in line with the process set out in the regulations and were satisfied that the neighbourhood had good access to pharmaceutical services. A new pharmacy Contract was neither necessary nor expedient and therefore the application was refused.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 16<sup>th</sup> November 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The PCT has failed to provide any adequate reasons for rejecting the application.
- 3.2 The PCT has failed to indicate what if any weight it gave to any of the Applicant's or Objector's submissions.
- 3.3 The PCT has failed to indicate if any consideration was given to Regulation 12(2)b, namely, whether or not the reliant population has a 'reasonable choice' of both services and providers of these services in the neighbourhood.
- 3.4 The PCT has failed to consider the impact that the new Medical Centre at The Warrens Nursery will have on the demand for pharmaceutical services within the neighbourhood.

### 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 BOOTS UK LTD
  - 4.1.1 Boots agree with the PCT decision to reject the application and their reasoning.
  - 4.1.2 The PCT have recently approved a minor relocation of the Boots UK Pharmacy from 509 Pensby Road, Thingwall to the proposed Primary Care Centre (land at Warren Nurseries) Thingwall Road East, Thingwall.
  - 4.1.3 The Thingwall neighbourhood has been defined by the PCT as: Cornelius Drive, Wimbourne Ave taking a line to Barnsdale Avenue, Barnston Road (to include properties on both sides) from mini roundabout, Pensby Road along Thingwall Road East (to include properties on both sides) Whaley Lane,

Oakley Road, Marlston Avenue (including cul-de-sacs Daleside Close and Leafield Close), taking an imaginary line to the other side of the housing (to exclude Exmoor Close) joining back up with Cornelius Drive.

- 4.1.4 The population of the whole of Thingwall was quoted as 3140 at the time of the 2001 census. High levels car ownership and owner occupied housing indicate a level of affluence within the area.
- 4.1.5 Boots pharmacy currently opens six days a week and provides patients with access to a range of enhanced and advanced services including; Medicines Use Reviews, Minor Ailments Scheme, Supervised Administration, Smoking Cessation service, Emergency Hormonal Contraception, Care Home Services and free prescription collection and delivery services.
- 4.1.6 Boots will continue to provide all the existing services from the new premises and would be pleased to discuss any additional services of hours of service from the new location that the PCT may wish to commission.
- 4.1.7 Boots therefore submit that patients in the neighbourhood have access to a reasonable choice of wholly adequate pharmaceutical services. Should patients wish to seek a choice of service provider for whatever reason, Boots believe the pharmacies located in the adjacent neighbourhoods of Pensby and Irby would provide this choice.
- 4.1.8 The appellant 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 or that these pharmacies will be unable to meet any future increase in demand, in particular any brought about by the proposed medical centre development.
- 4.1.9 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.

#### 4.2 THE CO-OPERATIVE PHARMACY

- 4.2.1 The Co-operative Pharmacy wishes to write and support the decision of Wirral PCT to reject the above application.
- 4.2.2 The Co-operative Pharmacy would disagree with the applicants definition of neighbourhood and believes that the PCT's definition is more accurate.
- 4.2.3 The Co-operative Pharmacy would also point out that the new surgery has not yet received final planning permission, nor has it reached financial close with the PCT, so it is still not certain that it will even be built. Until this is resolved, the proposed new medical centre should not be a consideration.
- 4.2.4 Finally, the appeal authority will be aware that a relocation of an existing contract to the same site as the applicant has recently been granted.
- 4.2.5 Given the above, The Co-operative Pharmacy requests the appeals authority uphold the decision of Wirral PCT and determines that the application is neither necessary nor expedient.

#### 4.3 LLOYDS PHARMACY LTD

- 4.3.1 The appeal does not provide any evidence that the PCT came to the wrong conclusion.

- 4.3.2 The comments made by the applicant and the interested parties would have been put before the Committee when it considered the application.
- 4.3.3 Lloyds maintain their comments that there are already numerous pharmacies in the vicinity of this site. The applicant has failed to provide any details of inadequacy of existing services and Lloyds can assume therefore that the application is based entirely around convenience.
- 4.3.4 The applicant refers to a new medical centre but no details are provided regarding timescale or planning. There is also no evidence that the existing pharmacies would not be able to meet the needs of these patients should any such development take place.
- 4.3.5 For the above reasons therefore Lloyds respectfully ask the PCT to refuse the application accordingly.

#### 4.4 CENTRAL OPERATIONS MERSEY

- 4.4.1 The application was considered under Regulation 12 of the NHS Pharmaceutical Service Regulations 2005 (as amended) which states: An application shall be granted by the PCT only if it is satisfied that it is necessary or expedient to grant the application in order to secure, in the neighbourhood in which the premises from which the applicant intends to provide the services are located, the adequate provision, by persons included in a pharmaceutical list, of the services, or some of the services, specified in the application 'the necessary and expedient test'.
- 4.4.2 The Committee undertook a full review in line with the process set out in the regulations and a detailed site visit was conducted, the committee were satisfied that the neighbourhood had good access to pharmaceutical services.
- 4.4.3 The Committee gave due consideration to all representations received from Interested Parties and the Applicant's response to those representations, this is detailed in the minutes of the meeting which have been sent to the Appeal Unit.
- 4.4.4 Control of Entry - Application for Inclusion in the Pharmaceutical List. PCT template - The Committee considered the application under the adequacy/competition and choice, necessary or expedient criteria. The completed template (appendix 1) was sent to the Appeal Unit as part of the paperwork submitted to 27 November 2009.
- 4.4.5 The PCT did have discussion regarding the future use of the Warrens site.
- 4.4.6 The PCT maintain that the decision has been correctly made in compliance with the NHS Regulations and request that the Litigation Authority reject this appeal.

#### 4.5 WIRRAL LPC

- 4.5.1 At the present time the LPC wish to make no further comment, aside from the comments made to the PCT in their letter dated 19<sup>th</sup> August 2009.
- 4.5.2 This stated:
- 4.5.3 The Neighbourhood as defined by the applicant is already served by a pharmacy which provides an adequate pharmaceutical provision for the Area.

- 4.5.4 The LPC believes the provision to be adequate because, to the best of their knowledge, there have been no complaints to themselves, the PCT or the local MP. The present four Pharmacies offer collection and delivery services.
  - 4.5.5 The services which have been listed in the application are already provided by the four contractors presently in the area.
  - 4.5.6 The LPC do however recognise in this instance that with the polarisation of GPs into the Warrens Medical Centre that it might be convenient for patients to be able to access Pharmaceutical services at the same site.
  - 4.5.7 The LPC suggested that perhaps the ideal work around would be for the PCT to encourage/ foster a coalition of the existing four pharmacies who currently provide service in this neighbourhood or to allow a relocation of a current contract onto the site. A relocation of an existing contract has now been granted by the PCT.
- 4.6 M. & A. WEINRONK PHARMACIES
- 4.6.1 Weinronk wrote in their previous submission
    - 4.6.1.1 "The proposed new development at the Warrens Nursery has been rejected once at the planning stage and may well be rejected again as it stands on greenbelt land. There is a consultation period and the final decision will be made in September 2009. It is impossible to grant this application based on a future development that there is no permission to build, so the decision must be based on the situation as it stands now."
  - 4.6.2 Since that time planning permission has been granted however there is still an appeals process to go through before the final decision to build this GP practice is allowed. This means your decision is still based on a hypothetical situation where there is no new GP surgery. On this basis the new pharmacy is neither necessary nor desirable in order to provide an adequate pharmacy service. If you are making the decision on the hypothetical basis of a new GP surgery being built then we must also take into account the minor relocation application for Boots the Chemist to move onto the new site which has been granted by the PCT (and not appealed). The committee should not ignore the existence of this relocated pharmacy onto the site when it makes its decision.
  - 4.6.3 The first decision to be made is that of adequacy of service. The pharmacy services within the neighbourhood provided by Boots (less than 1 mile or relocated onto the site) and by the surrounding other pharmacies (two in Pensby and one in Irby) are excellent and the full range of services are provided including collection and delivery to the housebound and elderly and a range of other services currently funded by the PCT. All three pharmacies provide services to patients who reside within the neighbourhood boundaries as described in the application.
  - 4.6.4 Within a mile of the site are two other pharmacies near Arrowe Park one of which provides services over extended hours including late nights and weekends and provides a minor ailments scheme. The regulations do not state that there has to be a choice of pharmacy premises within the neighbourhood and the appeals authority have regularly taken into account pharmacy services provided for patients within the neighbourhood from pharmacies just outside the neighbourhood.
  - 4.6.5 The applicant has not provided any information as to the inadequacy of the services provided. There are no patient surveys, no evidence from patient

representative groups, complaints etc. to prove that another pharmacy is needed to bring the service up to an adequate standard.

- 4.6.6 There is no evidence that there is unmet pharmaceutical need in the area or that patients have difficulty accessing pharmaceutical services and, to Weinronk's knowledge, there have never been any complaints about the accessibility of pharmacy services. There is no evidence that the pharmacies within the neighbourhood and the surrounding pharmacies could not continue to provide an adequate service to the users of the new GP surgery if it were built. The PCT has considered the impact that the new medical centre will have on the demand for pharmaceutical services by allowing the minor relocation by Boots onto the site.
- 4.6.7 Weinronk urge the Appeal Unit to reject this appeal as the appellant has provided no evidence of inadequacy of service either before or after the new health centre is built.

#### 4.7 COMMUNITY PHARMACIES (UK) LTD

##### Background

- 4.7.1 Community Pharmacies (UK) Limited ("CPL") proposes to operate a pharmacy in the immediate vicinity of the New Medical Centre Development at The Warren Nursery CH61 3UY.
- 4.7.2 The West Wirral Group Practice currently provide GMS services from three different sites across the Wirral area at Heswall Surgery, "Winterdyne", Rocky Lane, Heswall, Wirral CH60 0BY; Irby Surgery, 33 Thingwall Road, Irby, Wirral CH61 3UF; and Thingwall Surgery, 530 Pensby Road, Thingwall, Wirral CH61 7UF. All three of these surgeries will be re-locating into one purpose-built primary care resource centre on the Warrens Nursery site. These three practices equate to a combined list size of over 14,000 patients who will be obtaining primary care services from the new health centre located in the Thingwall neighbourhood.
- 4.7.3 Planning permission has been granted for the construction of the new Health Centre on the Warrens Nursery site (ref. 09/5706). Construction is expected to commence early in 2010.
- 4.7.4 Appendix 1 contains plans of the health centre development.

##### Neighbourhood

- 4.7.5 CPL accepts the neighbourhood proposed by the PCT. CPL believe that the new Health Centre site forms part of the neighbourhood and the neighbourhood boundaries should be as follows:
- 4.7.5.1 Southern boundary: Cornelius Drive, Wimbourne Avenue taking a line to Barnsdale Avenue.
- 4.7.5.2 Eastern boundary: Barnston Road (to include properties on both sides).
- 4.7.5.3 Northern boundary: Pensby Road along Thingwall Road East (to include properties on both sides including the Warrens Nursery Site).
- 4.7.5.4 Western boundary: Whaley Lane, Oakley Road, Marlston Avenue (including cul-de-sacs Daleside Close and Leafield Close), taking an

imaginary line to the other side of the housing (to include Exmoor Close) joining back up with Cornelius Drive.

- 4.7.5.5 A map of the neighbourhood can be seen in appendix 2.
- 4.7.6 The PCT's decision states that "The Committee felt that this neighbourhood appropriately defined the neighbourhood known as Thingwall".
- 4.7.7 The Thingwall neighbourhood forms part of the Pensby & Thingwall Ward which in turn forms part of the Metropolitan Borough of Wirral.
- 4.7.8 According to the 2001 population statistics, the ward of Pensby & Thingwall has a population of 13,319, which is clearly too large a resident population to be considered a single neighbourhood.
- 4.7.9 As the PCT accepted, Pensby and Thingwall are separate neighbourhoods for several reasons. There is also a difference in the type of housing in the southern area of the Thingwall neighbourhood and the northern area of the Pensby neighbourhood, clearly marking the different neighbourhoods. The neighbourhood's southern boundary has been proposed on the basis of changes within the local neighbourhood including a clear differentiation in housing type, with semi-detached and detached houses built in the 1920s and 1930s in Thingwall, while Pensby is characterised by bungalows built in the 1950s and 1960s. This is evident from the housing stock at the southern boundary of the neighbourhood.
- 4.7.10 In the case of *Sainsbury's Supermarkets Ltd v the National Appeal Panel for Entry to the Pharmaceutical Lists*, the Court of Session considered the issue of what constituted a "neighbourhood". Lord Carloway held that the ascertainment of the neighbourhood will be a matter of facts and circumstances which may depend on a great number of factors. The Court supported the view reached by the Panel in that case, in which it had chosen the "natural" neighbourhood. It was held that factors which it had taken into account included the walking distance to facilities within a given neighbourhood, including shops, primary schools and post office. "In urban areas, walking distance, as a factor may be a very useful tool in ascertaining the extent of a neighbourhood."
- 4.7.11 The Courts have also ruled on the issue of what constitutes a neighbourhood in *In the matter of an application by Boots the Chemist Limited for Judicial Review*, when previous case law was considered.
- 4.7.12 In *Boots*, the Court also considered *Donnelly v- Re Hotel Ltd (1985)*, where it was held that "it is of importance to look both at the physical features of an area and any natural boundaries, and also at the established dwelling patterns and any geographical allegiances of those who live, work or shop there. A vicinity accordingly seems to me to connote more than the area plotted on a map; its determination has to take into account the habits and movements of people in the area, and the direction in which those habits take them in the course of their daily lives."
- 4.7.13 It was held that "a neighbourhood is an area defined by physical and social factors". In the current instance, both social and geographic factors indicate clearly that Thingwall and Pensby are distinct neighbourhoods.
- 4.7.14 Pensby lies very much to the south of Thingwall and has its own neighbourhood centre which has convenience stores, a post office, pharmacy, schools and other community resources including the Pensby Hotel. Immediately south of the southern boundary on Pensby Road, there is a sign clearly denoting that you are entering Pensby. There is a clear change

in the neighbourhood make up in terms of residential housing and the communities' consideration of where they reside.

- 4.7.15 It is evident from both the changes in housing, neighbourhood signage and businesses that as one travels south along Pensby Road one leaves the neighbourhood of Thingwall and enters the adjoining neighbourhood of Pensby.
- 4.7.16 Thingwall has its own neighbourhood centre which serves the residents of Thingwall. The services provided are:
- 4.7.16.1 Post Office; Convenience Store; Pharmacy; Dry Cleaners; Filling Station; Primary School
- 4.7.17 There are also additional services:
- 4.7.17.1 Dentists; Grocers; Garden Store; Music School
- 4.7.18 Thingwall is a separate and distinct neighbourhood to that of Pensby and it is reasonable to conclude that someone living on Sparks Lane or Whaley Lane would not consider themselves to be a neighbour of someone on Gills Lane or Fisher Lane.
- 4.7.19 The proposed neighbourhood is largely made up of 2 Lower Layer Super Output Areas being Ward 34C and Ward 34E giving the neighbourhood a resident population of circa 3,500 (if you assume for a reasonable 10% growth over the last 9 years). As a result, the population of the neighbourhood has a higher than average need for pharmaceutical services and will have particular needs as a result.
- 4.7.20 The demand for Pharmaceutical services within the neighbourhood will further increase once the new Medical Centre opens, increasing the reliant population. There is only a single pharmacy in the neighbourhood which will be unable to cope with this increase in demand. At present there is a resident population of circa 3,500 within the neighbourhood. With the opening of the new health centre the resident and reliant population of the neighbourhood will grow by circa 10,500 or 400%, this will mean that the current pharmaceutical services will not be adequate and will not serve patient needs appropriately.

#### Demographics

- 4.7.21 The proposed neighbourhood falls within the Pensby & Thingwall Ward.
- 4.7.22 The Lower Layer Super Output Area that runs through the heart of the proposed neighbourhood is Wirral 034C.
- 4.7.23 Only 63.9% of the area deems their health to be good in comparison to 68.8% nationally.
- 4.7.24 11.6% state their health as being "Not Good" compared to 9.0% nationally.
- 4.7.25 23.7% of the neighbourhood suffer from a limiting long term illness compared to 17.9% nationally.
- 4.7.26 30.1% of the neighbourhood is aged over 65 compared to 15.1% nationally.
- 4.7.27 It is evident that in comparison to the national average, this neighbourhood contains a significantly older than average population with a greater number

of residents suffering from limiting long term illnesses or health which they describe as “not good”. These figures clearly indicate that the residents of the neighbourhood will have a higher than average demand for pharmacy services and with the new health centre adding to the reliant population with 14,000 patients, demand for pharmacy services will increase dramatically.

- 4.7.28 According to the PCT’s own “Modelled disease incidence and prevalence projections” (see appendix 3) the area will see marked increases over the next 5 years across CHD, Hypertension, Stroke, Diabetes, COPD and Lung Cancer.
- 4.7.29 The 2009 Health Profile for Wirral (see appendix 4) shows that there are several key measures of health that are significantly worse in Wirral than in England these being:
- 4.7.29.1 Deprivation; Children’s tooth decay; Teenage Pregnancy; Binge Drinking Adults; Over 65’s who describe themselves as “not in good health”; Drug misuse; Diabetes; Life expectancy male & female; Deaths from smoking; Early deaths.

#### Access to Pharmacies

- 4.7.30 There is currently only one pharmacy in the proposed neighbourhood, that being Alliance Pharmacy at 509 Pensby Road.
- 4.7.31 The pharmacy is located approximately 0.9 km away from the new medical centre (see appendix 5). The journey on foot involves crossing the busy Pensby Road which has no designated crossing points making access difficult particularly for parents with young children and the elderly, or others with mobility problems.
- 4.7.32 The next nearest pharmacies are located outside of the neighbourhood of Thingwall and are 1.6km, 2.1km and 2.2km distant from the main entrance to the new Health Centre at Warrens Nursery. Accessing these three pharmacies poses a significant journey for patients who attend the new Health Centre with many in the Thingwall neighbourhood having to undertake journeys of over 4 km as a round trip to access pharmacies in other neighbourhoods.
- 4.7.33 The LPC have stated that they recognise that in this instance that with the polarisation of GPs into the Warrens Medical Centre that it might be convenient (CPL’s emphasis) for patients to be able to access Pharmaceutical services at the same site.
- 4.7.34 The courts have made it perfectly clear that convenience is a ground to consider (CPL’s emphasis). Beldam LJ observed in ex parte E. Moss Ltd, Transcript p. 22, that “convenience is not an irrelevant consideration”, the relevant passage is quoted below;
- 4.7.34.1 “*To decide whether it is desirable to grant an application in order to secure adequate provision of services in a neighbourhood, the Authority has to compare the advantages with the disadvantages of doing so by using its judgment based on local knowledge and observation, present circumstances and future expectations. Convenience is not an irrelevant consideration.*” (emphasis added)

#### Service Provision

- 4.7.35 CPL will provide all locally commissioned enhanced services including but not limited to:
- 4.7.35.1 Smoking Cessation; EHC; Needle Exchange; Supervised Consumption; Alcohol screening & Intervention Service
- 4.7.36 In the Pharmaceutical Needs Assessment 2005 the PCT highlights 9 possible further services that could be commissioned in the Bebington & West Wirral area (The most up to date PNA available is from 2005 - see appendix 6 page 16). In addition to these CPL would provide the following services:
- 4.7.36.1 Lipotrim Weight Management Programme; Blood pressure screening; Diabetes screening; Cholesterol Screening; Free prescription collection & delivery service.
- 4.7.37 With the high elderly population in the neighbourhood there is a clear need for a pharmacy with facilities to serve the elderly and disabled. CPL will provide the following services:
- 4.7.37.1 DDA auto entry/exit doors with a ramp if required; Purpose built wheel chair prescription signing area on main counter; Induction hearing loop; 'Ask for Help' internal signage; Large dispensing labels if required; Assessment of patient needs and supply of tailored medicine dispensing monitored dose boxes; Aids to help people take their medication (tablet splitter, oral syringes, eye droppers etc).
- 4.7.38 All pharmacists employed will be qualified to provide Medicine Use Reviews (MUR's) and the premises fitted out in such a way to provide a private consultation room. CPL ensure they have more than adequate staffing and second pharmacist cover to enable the delivery of MURs in a professional manner from dedicated consulting rooms with the most up to date information technology. The pharmacy will also be fitted with the relevant IT connectivity to enable electronic transmission of prescriptions and enable to communicate electronically with other members of the primary care team.
- 4.7.39 With the high number of elderly residents in the neighbourhood the demand for MUR's is likely to be high. The anticipated increase in the health problems amongst the Thingwall population will mean that this demand is expected to grow significantly within the next 5 years. In addition, the provision of advanced and enhanced services in an easily accessible location which is designed to accommodate the needs of the neighbourhoods residents will result in a good uptake of these services.

#### Choice in the Neighbourhood

- 4.7.40 Under the NHS (Pharmaceutical Services) Regulations 2005, reasonable choice of both contractor and services have been included as a matter which the PCT and Appeal Unit are obliged to have 'particular regard' to.
- 4.7.41 In the recent review of the Control of Entry Regulations, the government specifically set out the reasons for the explicit inclusion of choice in the 2005 Regulations. The reasons included:
- 4.7.41.1 Promote consumer choice and harness the benefits of increased competition.
- 4.7.41.2 Improve further the accessibility and convenience of pharmaceutical services.

4.7.42 Choice is part of the overall test of adequacy, but is nevertheless of particular importance and must be considered in each application for inclusion in the Pharmaceutical List.

4.7.43 There is no choice of pharmacy services or service provider in the proposed neighbourhood.

#### Conclusion

4.7.44 This application is both necessary and desirable in order to secure adequate pharmaceutical services in the neighbourhood for the following reasons:

4.7.45 A pharmacy at the proposed location would meet the needs of the substantial resident and reliant population in the neighbourhood. This includes 3,500 residents and 14,000 patients registered at Wirral Group Practice who form the reliant population of the neighbourhood.

4.7.46 The new health centre development ensures that there will be a dramatic change in the demand for pharmaceutical services. The comments of Lord Drummond Young in *Lloyds Pharmacy v NAP* June 2004 (paragraph 10), are particularly relevant to this application.

*'The question that the decision-maker must address is the adequacy of the existing provision to serve the neighbourhood in question. In addressing that question, however, it is in our opinion proper to have regard to probable future developments, for two reasons.*

*First, the standard of adequacy in a particular neighbourhood will obviously change with time. The relevant neighbourhood may change, for example through the construction of new housing developments or the movement of population out of inner-city areas. Likewise, changes inevitably occur in pharmaceutical practice, and the standard of "adequate" pharmaceutical provision must accordingly develop over time. The proposal under consideration may well provide an illustration of how pharmaceutical practice is developing, and may be relevant to show what sort of provision is possible in the neighbourhood. We are in full agreement with the Lord Ordinary that changes in pharmaceutical practice should be taken into account by the decision-maker.*

*Secondly, regulation 5(10) uses the word "secure" in relation to the adequate provision of pharmaceutical services. That word seems to us to indicate that the decision-maker can look to more than merely achieving a bare present adequacy of pharmaceutical provision. "Secure" suggests that it should be possible to maintain a state of adequacy of provision into the future. That indicates that the decision-maker must have some regard to future developments, in order to ensure that an adequate provision can be maintained. The decision-maker must, however, determine the adequacy of the existing provision of pharmaceutical services at a specific time, the time of its decision. It must accordingly reach its conclusion on the adequacy of the existing provision on the basis of what is known at that time, together with future developments that can be considered probable rather than speculative. The decision-maker must also bear in mind that the critical question at this stage of its reasoning is the adequacy of the existing provision, not the adequacy or desirability of some other possible configuration of pharmaceutical services within the neighbourhood.'*

4.7.47 The development of the Warrens Nursery site bringing the three practices together in a modern primary care centre will further increase demand for pharmacy provision in the neighbourhood. It will also create the opportunity for an integrated pharmacy service focussed on addressing local health

needs and reducing health inequalities in the neighbourhood. In considering this appeal, the standard of adequacy must be considered. The demographic profile of the neighbourhood means that there is currently the need for a greater than average level of pharmaceutical services within the neighbourhood. The increase in patient numbers at the new medical centre will lead to a greater need for pharmaceutical services within the neighbourhood. In addition, the needs of the population within the neighbourhood for pharmaceutical services will continue to increase overtime, particularly given that there is an aging population within the neighbourhood.

- 4.7.48 The significant increase in demand that will be created through the new health centre development will not be able to be met as things currently stand in relation to pharmacy service provision. A new pharmacy at the new health centre site will bridge the service gap and secure adequacy for the future.
- 4.7.49 The next nearest pharmacies are not easily accessible; located 1.6km, 2.1km and 2.2km distance from the new health centre site and along and across a busy road and these pharmacies are in different neighbourhoods.
- 4.7.50 The neighbourhood demographics demonstrate that both the resident and the reliant population have greater health needs when compared to national figures.
- 4.7.51 As Lord Drummond Young made clear in *Lloyds Pharmacy v NAP* it is appropriate for the PCT to bear in mind the future needs of the neighbourhood, on the basis of those future developments which are probable. The PCT's Modelled disease incidence and prevalence projections illustrates that additional health problems are anticipated in the neighbourhood, which will give rise to the need for further pharmaceutical services. Considering the forthcoming needs of the neighbourhood will allow the PCT to secure adequate pharmaceutical services within the neighbourhood on an ongoing basis. This will mean that the increased need for pharmaceutical services within the neighbourhood are met once the Warrens medical centre opens and, in due course, as the needs of the local population increases, that further need will also be met.
- 4.7.52 Community Pharmacies (UK) Ltd will work closely with all stakeholders to deliver the services needed in this neighbourhood.
- 4.7.53 The granting of this application would overcome all of these issues and secure adequate pharmaceutical services in the neighbourhood. The needs of the neighbourhood mean that there is not access to adequate pharmaceutical services within the neighbourhood, so it is necessary and desirable that this application be granted to meet these needs and to ensure that patients and residents within the neighbourhood have access to choice of pharmaceutical service providers.

## 5 Further comments

### 5.1 COMMUNITY PHARMACIES (UK) LTD

- 5.1.1 Several of the respondents are stating that the planning permission for the New Primary Care Centre is still subject to an appeal and that as such it is a "hypothetical" development. The applicant strongly refutes these claims. Having discussed the situation at length with the principal planner at the Planning Office of Wirral Council the applicant has been advised that full planning has been granted and that there is no appeal. Please see the attached email correspondence and planning decision. The applicant has also been advised by the developer that works are planned to commence in

June 2010 with a 50 week build programme making the timing of the application appropriate to secure adequacy of pharmaceutical services on completion of the new health centre.

- 5.1.2 There are statements around the new development not having obtained business case approval. Again this is strongly refuted. This scheme has been nearly 15 years in the planning and has the support of the PCT and the GPs as well as many patients in the local community as evidenced from the GPs patient consultation. The Applicant has been assured by the developer that the scheme has received business case approval.
- 5.1.3 There are several submissions seeking to convince the panel that adequacy will be secured as a result of the granting of a minor relocation for Boots to the new health centre site. The applicant would submit to the appeal authority that this in no way secures adequacy as Boots do not have a lease to enable to them to relocate. Community Pharmacies (UK) Ltd is in negotiations with the developer to secure the lease and they would submit that in no way can the granting of a minor relocation be deemed as securing adequacy.
- 5.1.4 Due to the dispute over the matters outlined above and in their earlier submissions Community Pharmacies respectfully requests an Oral Hearing in order for this application to be decided.

## 6 Consideration

- 6.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site (or location) of the proposed pharmacy.
- 6.2 It also had before it the responses to the Authority's own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to Regulation 12(1), the necessary or desirable test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 6.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 6.6 The Committee noted there was no dispute regarding the PCT neighbourhood of Thingwall which appeared to be based on appropriate features in the area, and were therefore content to accept that neighbourhood for the purposes of this application.
- 6.7 The Committee noted that an application by Boots for minor relocation to the same location had been granted on 5<sup>th</sup> October 2009. The Committee had regard to the applicant's comment that Boots do not have a lease however noted that the applicant themselves state that they are in negotiations and were therefore of the view that they held no advantage in this regard. The fact remains there is an extant grant. On this basis the Committee took the view that it was not necessary to grant the current application.
- 6.8 The Committee accepted that there is no choice within the neighbourhood however having had regard to the above grant and the representations received, and the Committee noted statements by the applicant that the present pharmacy would be unable to cope with future demand due to the anticipated increase in prescriptions in the neighbourhood due to the proposed surgery. The Committee was of the view however that no information had been provided as to why this would be the case. The

Committee was of the view that no information has been provided by the applicant to suggest that the granting of a further contract to the proposed site is expedient to secure the adequate provision of pharmaceutical services in the neighbourhood.

**7 Decision**

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

**Abby Richards**  
**Appeal Officer**

A copy of this decision is being sent to:

Community Pharmacies (UK) Ltd  
Central Operations Mersey, on behalf of the PCT  
Wirral LPC  
Boots UK Ltd  
The Co-operative Pharmacy  
Lloyds Pharmacy Ltd  
M. & A. Weinronk Pharmacies