

15 January 2010

REF: SHA/15377

APPLICATION BY WAREMOSS LTD (t/a BOW PHARMACY) FOR A MINOR RELOCATION FROM 18 STROUDLEY WALK, BOW E3 3EW TO ST ANDREWS HEALTH CENTRE, DEVONS ROAD, BOW E3 TO BE CONSIDERED AS UNDER 500 METRES – APPEAL AGAINST TOWER HAMLETS PCT DECISION THAT IT IS DESIRABLE TO CONSIDER IT AS A MINOR RELOCATION TO PREMISES WHICH ARE 500 METRES OR MORE

1 The Application

By application dated 7 July 2009, Waremass Ltd (“the Applicant”) applied to Tower Hamlets Primary Care Trust (“the PCT”) for minor relocation under 500 metres, of Bow Pharmacy from 18 Stroudley Walk, Bow E3 3EW to St Andrews Health Centre, Devons Road, Bow E3. In support of the application it was stated:

- 1.1 From Bow Pharmacy to the new premises it is a straightforward stroll along Stroudley Walk to Devons Road which is a distance door-to-door of 481 metres. This has been measured with a measuring wheel and includes a generous allowance of 30metres for the estimated distance from the road to the door of the new pharmacy. There is no incline and the pavements are good. There is a bridge which the railway line crosses over so that it does not affect the walk along Devons Road. There is a zebra crossing on Devons Road so it is easy to cross to the new location.
- 1.2 The neighbourhood which Bow Pharmacy serves is shown in the enclosed map and is as follows:

Clockwise to the:

 - 1.2.1 North: the A11.
 - 1.2.2 West: the A12.
 - 1.2.3 South: the Limehouse Cut canal.
 - 1.2.4 East: the DLR line which connects Bow Church and Devons Rd DLR stations.
- 1.3 This is therefore a minor relocation under 500m with the same neighbourhood.
- 1.4 Please note that in order for this to be approved as a minor relocation under 500m the hours and services offered have to be the same as already provided, It would be intended that, in discussion with the PCT and if they so desire, the opening hours would later be lengthened and the range of services increased to include supplementary/independent prescribing as well as prescribing advice etc.

Reason for Minor Relocation

- 1.5 This minor relocation is necessary because of the demolition of the Stroudley walk shops, including Bow Pharmacy, that has been planned by Poplar Harca. It is therefore necessary for Bow Pharmacy to relocate.

2 The PCT Decision

The PCT considered and decided to consider the application as a minor relocation over 500metres. The decision letter from NHS Shared Business Services (on behalf of the PCT) dated 28 August 2009 states:

- 2.1 The PCT writes in reference to the application for preliminary consent for a minor relocation within NHS Tower Hamlets. Under Paragraph 6(3) of the NHS (Pharmaceutical Services) Regulations, the PCT considers that it is desirable that the application be determined as if it were a minor relocation to premises which are 500m or more from the existing premises.
- 2.2 The reasons for wishing to consider the application in this manner are because the PCT:
 - 2.2.1 Is not convinced that the distance is under 500m
 - 2.2.2 Believes that the proposed premises may not be within the same neighbourhood as the existing premises
- 2.3 A site visit was carried out and the distance measured by surveyors wheel, walking from the existing pharmacy at 18 Stroudley Walk to the junction of Devons Road and Devas Street was approximately 530m. As the actual premises for the St Andrews Health Centre and any proposed pharmacy have not been identified the PCT is unable to determine that the distance is under 500m.
- 2.4 During the site visit neighbourhood boundaries were not clearly distinguished and therefore the PCT is currently not in a position to be precise about the actual neighbourhood boundary.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 21 September 2009, the applicant appealed against the PCT’s decision. The grounds of appeal were:

- 3.1 The applicant would like to appeal the above decision made by Tower Hamlets PCT. The PCT refused the decision for two reasons.
- 3.2 The first reason is that the PCT “is not convinced that the distance is under 500m.” The PCT then say that they measured the distance to be 530m. Unfortunately, the PCT decided to measure from the existing pharmacy to the junction of Devons Road and Devas Street. This bears no relation to where the entrance to the new health centre and pharmacy will be. In fact the PCT then admits they did not know where they were measuring by stating that “the actual premises for the St Andrews Health centre and any proposed pharmacy have not been identified...”
- 3.3 This is surprising considering that the St Andrews Health centre block is being quickly built on behalf of the PCT and can be seen from the end of Stroudley Walk. The PCT has stated elsewhere that medical services are due to commence there in Jan/Feb 2010. The applicant has revisited the site to recheck their measurements which they confirmed are 451m from Bow Pharmacy to the pillar box and zebra crossing at Devons Road. This is where the entrance to the new pharmacy will be. The applicant added a very generous 30m in their application for the distance from the pillar box to the entrance of the pharmacy. The applicant visited the building site and spoke to the site manager, Mr Peter Robertson, who confirmed the position and that the 30m was a very generous estimate. The distance is likely to be much less.
- 3.4 Enclosed with the appeal is a copy of the plan of the entrance that the site manager photocopied for the applicant. Also enclosed is a copy of the plan of the health centre that is on page 3 of the June edition of St Andrews News.
- 3.5 It is therefore clear that the entrance to the proposed pharmacy is not where the PCT measured to and it is in fact under 500m.
- 3.6 The second reason given is that the PCT “believes that the proposed premises may not be within the same neighbourhood as the existing premises” although the PCT then goes onto say that “during the site visit neighbourhood boundaries were not clearly distinguished and therefore the PCT is not currently in a position to be precise about the actual neighbourhood boundary.”
- 3.7 The PCT is vague in their decision but the applicant presumes that they may be thinking that the railway line that crosses over Devons Road may be a boundary. The applicant considers that the PCT is mistaken. Bow Pharmacy currently provides a full range of pharmaceutical services to the population along the whole length of Devons Road. The railway line actually crosses over the road on a bridge so does not interfere with access along Devons Road. The population of Stroudley Walk regard the St Andrews development as being part of their community and not in a different neighbourhood. During the applicant’s visit, many school children and parents were walking under the railway bridge in Devons Road. It is not a neighbourhood boundary.
- 3.8 For all of the above reasons the applicant hopes that the Committee will reconsider the decision made by Tower Hamlets PCT.

4 Summary of Representations

This is a summary of representations received on the appeal.

NHS Shared Business Services (on behalf of the PCT)

- 4.1 In their decision letter the PCT set out the reasons why they felt they could not approve the application. These were:
- 4.1.1 The PCT is not convinced that the distance is under 500m.
- 4.1.2 The PCT believes that the proposed premises may not be within the same neighbourhood as the existing premises.
- 4.2 The PCT are happy to expand further on their reasoning for this and address the issues raised by Waremass Group in their appeal.
- 4.3 Firstly the application submitted by Waremass was for preliminary consent. It did not specify an actual premises — rather St. Andrew's Health Centre. The planned health centre is part of a wider redevelopment of the former St. Andrew's hospital site and redevelopment with a residential-led mixed-use scheme. This provides up to 964 new homes, 151 car parking spaces and up to 3,351 sq.m. non-residential floor space (including retail, food and drink, health care, education and cultural uses). The proposed pharmacy is approximately 100sq.m.
- 4.4 The plans for this redevelopment have evolved over a number of years, and during that time there have been significant redrawing of plans. The proposed location of the pharmacy has changed a number of times .Over that time there has been numerous publications showing possible plans, including public consultation meetings and meetings with other stakeholders.
- 4.5 Therefore given the fact that the application was for preliminary consent and at the time of application the actual location of the pharmacy had not been confirmed, the PCT was not of the view that the actual distance was less than 500m. The PCT believe that under Regulation 6(3) the PCT can only approve the application if it the actual distance is less than 500m. In coming to that decision the PCT were conscious of the guidance on applications of under 500m set out in DH guidance at the time of their decision, Information for Primary Care Trusts (Control of Entry) revised February 2007, Paragraph 3.38 states that PCTs should still undertake site visits to ensure the maximum distance of less than 500m has not been exceeded. Paragraph 3.39 also states that a PCT should reach their decision on their assessment of the facts of the case before them. Based on the facts before the PCT at the time of consideration the PCT did not believe that the maximum distance of less than 500m could be confirmed.
- 4.6 Secondly, the PCT was unable to determine actual neighbourhood boundaries at the time of its site visit. Whilst the applicant did define a neighbourhood in his application, he did not expand and give any justification for the actual neighbourhood boundaries. In particular the applicant makes no reference to the massive regeneration in the whole area.
- 4.7 The PCT would like to put this into context of the overall transformation of Tower Hamlets through regeneration, new investment and population growth. Between 2007 and 2021, the population of Tower Hamlets is projected to grow from 231,032 to 342,098, an increase of 111,066 or 48%. In the North East Locality, in which the St. Andrews Health Centre is located, the overall population is expected to grow from 49,374 to 71,483. The actual residential population is expected to grow by 15,000. The area lies just to the west of the Olympics site. Even in the neighbourhood that the applicant proposes, there is currently significant regeneration occurring in areas such as the Crossways Estate — to the west of Stroudley Walk/Devons Road, the Bow Bridge Estate — to the east of Stroudley Walk, as well as to the whole St. Andrew's site, of which the Health Centre is but a small part. The current housing stock to either side of Devons Road (post war low level council flats) is very different in character and nature to both the newly refurbished parts of the Crossway Estate, as well as the newer housing south of the railway line around Purdy Street and Tibb Road.

- 4.8 The provision of medical services from St. Andrews Health Centre is part of the Expanded Access to Primary Medical Care (EAPMC). The aims of the EAPMC programme have particular focus on achieving closer integration with other health/community services and social care, with extensive opening hours and access to walk-in and registered services. Many of the principles map closely to the local Tower Hamlets partnership model of health and well-being centres and in particular those health centres identified as locality hubs. As part of the PCT's Improving Health and Well-being Strategy, there is a Pharmacy Strategy that sets out how pharmacy needs will be met as the population grows and the new centres are developed.
- 4.9 A key feature of the new services is that they must be properly new, i.e. "green-field" contracts/practices and not transfers of existing practices into new buildings or re branding of current developments. Therefore the GP services are being procured as an open-market tender. Current practices will not be relocating to the new site, and therefore there will continue to be considerable demand for pharmacy services to be provided by current contractor — whose dispensing figures the Appeals Unit will be aware of.
- 4.10 In addition to essential services, the current contractor also provides a number of enhanced services such as emergency hormonal contraception, stop smoking services, minor ailments and seasonal flu vaccinations. In particular the current contractor is one of the busiest pharmacies in the PCT's minor ailments service — which is already one of the busiest such schemes in the country. The PCT's Pharmaceutical Needs Assessment has identified the need to develop enhanced services in this area.
- 4.11 This suggests to the PCT that there is significant demand for pharmaceutical services at the current site, and therefore — in wishing to determine the application as one of over 500m — the PCT would hope to further explore this demand and the effect of any relocation on the access to pharmaceutical services of that population — in essence whether the proposed premises would be serving essentially the same population.
- 4.12 In terms of population flows and transport links — these are matters that the PCT would have wished to further explore if the application was determined as one of over 500m. It is not clear that currently there are significant population flows from the area around the current premises down to the St. Andrews site. Most of the population are likely to use the London Underground stations of Bow Road or Bromley-by-Bow or the Docklands Light railway station at Bow Church. Bow Road, the A11, is a significant arterial, red route with numerous buses going towards central London, the Royal London Hospital etc, or towards east London. The Tesco's superstore on the other side of the A 12 is accessed either by foot, through a foot tunnel just south of Talwin Street, or by public transport from Bow Road.
- 4.13 The PCT therefore felt that, based on the evidence that it had in front of it, it could not come to a conclusion that the existing premises are within the same neighbourhood as the proposed premises. It felt therefore that there was good cause to consider the application as one of over 500m and allow all stakeholders the opportunity to make representations.
- 4.14 In relation to the point that Waremooss Group make about the commencement of medical services in Jan/Feb 2010. The PCT has made clear in numerous correspondences with Mr Donaghy that the medical services will NOT start from the St Andrews site until much later in 2010. Interim premises are being made available to the new GP provider at the existing surgery at Birchdown House, Devons Road. The procurement process to identify this provider is well under way, and a preferred provider should be identified in late December 2009.
- 4.15 The PCT would also raise with the FHS Appeal Unit a possible concern about the whole concept of applying for preliminary consent for a minor relocation of under

500m. The PCT are concerned that this opens a loophole whereby an applicant could gain approval of a minor relocation of under 500m, and then, when applying for full consent specify premises which are in fact well over 500m. The PCT does not believe that was the intention of Parliament when these regulations were introduced, but rather it was the intention to speed up the process for minor relocations of a short distance where it was clear that the criteria of a minor relocation is met. The concept of preliminary consent is based on when an application is to a location where the actual premises cannot be specified. In a case such as this, at the time of application no-one can be precise as to the actual distance and there is the possibility that it could be over 500m.

- 4.16 In summary, the application is in an area where there is currently substantial regeneration taking place, plans for more regeneration in the next few years, and an expected increase in population of over 15,000. The PCT believes that there was very good cause at the time of application to consider it as one of over 500m and therefore allow the right to representation to all stakeholders before the PCT makes an informed decision.
- 4.17 The PCT would therefore ask that the Appeals Unit reject this appeal and allow the process of the PCT considering the application as if it were a minor relocation of over 500m to continue.

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- 4.18 The applicant agrees with the PCT that the plans for this development have evolved over a number of years. However at the time of the application, the pharmacy area was already half-constructed and its position clear to the PCT.
- 4.19 The applicant accepts that an increase in population is anticipated but they cannot define a neighbourhood on the expected population in 2021 that has been quoted by the PCT.
- 4.20 The letter then suggests that because Bow Pharmacy is providing the full range of enhanced services, and providing them well, that the minor relocation should not be considered as being under 500m. This seems to be a disincentive to provide a high quality, full range of enhanced services.
- 4.21 The PCT then discusses various neighbourhood issues that were not mentioned in the PCT's decision letter. The only part of the neighbourhood that could be relevant to this decision is the railway line that the applicant mentioned in the appeal letter dated 21 September. In that letter, the applicant explained that this is not a neighbourhood boundary as it is easy to drive or walk through, residents living on both side of the bridge currently use Bow Pharmacy, that many school children and parents were walking under the bridge during the applicant's site visit and that the St Andrew's Development can be seen from Stroudley Walk.
- 4.22 The point the applicant made in their letter about the commencement of medical services in early 2010 was fully referenced to a published PCT document. The PCT is correct that the applicant has been verbally informed of a number of different dates when services may start but none of these discussions carry the weight of an official written PCT document.
- 4.23 The paragraph discussing a potential loophole in the regulations is irrelevant. The applicant has measured the distance on a number on occasions and in every instance it is well under 500m as it was at the time of the application. The applicant intends, subject to approval and leases, to submit full consent for the pharmacy identified in the St Andrew's site.
- 4.24 The applicant agrees that regeneration is taking place. Poplar Harca are intending to demolish the Stroudley Walk surgery and in due course to demolish Bow Pharmacy.

It is therefore necessary for Bow Pharmacy to relocate. The exemption for minor relocations under 500m within the same neighbourhood was intended to aid such applications to be speedily approved. It is disappointing that the PCT wishes to complicate a straightforward application.

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 6(1) and 6(3) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee noted the PCT's decision on this application had been notified with a right of appeal, to Waremass Ltd. Regulation 6(5) indicates that where the PCT has determined an application to which regulation 6(3) applied, the applicant may appeal to the Secretary of State. The Committee proceeded to determine the appeal by Waremass Ltd.
- 5.6 The Committee were only concerned with the reasonableness of the PCT decision to treat the application as a minor relocation over 500 metres. The Committee were of the opinion that they were not determining whether the application should or should not be granted.
- 5.7 The Committee noted the PCT's response to the appeal was largely a justification of their reasons for finding that the application should be treated as one for a minor relocation over 500 metres. The Committee noted the PCT's uncertainty regarding the neighbourhood of the exiting pharmacy and that there was a suggestion that this is an area subject to substantial regeneration over the next few years. The Committee also noted that the proposed site is part of a new development, may account for the disagreement between the parties regarding the distance of the proposed relocation. On balance, given the PCT's concerns, the Committee was persuaded that the application should be determined by the PCT as a proposed minor relocation over 500 metres.

6 Decision

The Committee was of the view that the application should be dealt with as an application for a minor relocation over 500 metres. Accordingly the Committee dismisses the appeal.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr M Donaghy, Waremoss Ltd – Applicant/Appellant
Ms C Baker, NHS Shared Business Services (on behalf of the PCT)