

23 December 2009

REF: SHA/15427

**APPEAL AGAINST STOKE ON TRENT PCT DECISION
TO GRANT LLOYDS PHARMACY LTD APPLICATION
FOR MINOR RELOCATION UNDER 500 METRES,
FROM 25-27 STOKE ROAD, SHELTON, STOKE ON
TRENT, ST4 2QW TO SHELTON PRIMARY CARE
CENTRE, NORFOLK STREET, SHELTON, ST1 4PB**

1 The Application

By application dated 6 July 2009, Lloyds Pharmacy ("the Applicant") applied to Stoke on Trent Primary Care Trust ("the PCT") for minor relocation under 500 metres, from 25-27 Stoke Road, Shelton, Stoke on Trent, ST4 2QW to Shelton Primary Care Centre, Norfolk Street, Shelton, ST1 4PB. In support of the application it was stated:

- 1.1 As you will be aware Lloyds Pharmacy Limited have outstanding consent for minor relocation of the above pharmacy to The Shelton Primary Care Centre, Norfolk Street, Stoke on Trent, ST1 4PB. This current consent expires on the 21 November 2009.
- 1.2 Unfortunately due to various delays it is unlikely that we will have relocated by the 21st November 2009. As a result it is necessary for us to reapply for this relocation in order to complete the project.
- 1.3 Given that the PCT have previously approved this as a minor relocation I would be grateful if this fresh application could be considered by the PCT as soon as possible.
- 1.4 The proposed site is within the same neighbourhood, serving the same population. There will be no interruption in services and the same services will be provided.
- 1.5 From the existing unit turn right and continue along Stoke Road. Turn right into Norfolk Street where you will immediately see the Shelton Primary Care Centre on your right.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 15 September 2009 states:

- 2.1 I write to advise that NHS Stoke on Trent has granted the minor relocation application detailed above on the basis that the application meets the criteria stipulated in the Pharmaceutical Regulations for a minor relocation:
 - 2.1.1 The change of premises is a minor relocation under 500 metres. The distance between the two sites has been measured as 445 metres by the most practicable route;

- 2.1.2 The proposed move is within the same neighbourhood;
- 2.1.3 The services to be provided from the new premises are the same as those provided at the existing premises;
- 2.1.4 There are no barriers which would change the accessibility of the new premises;
- 2.1.5 The provision of pharmaceutical services will not be interrupted except for such a period as the Primary Care Trust may for "good cause" allow.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 8 October 2009, Day and Night Pharmacy, appealed against the PCT's decision. The grounds of appeal were:

- 3.1 This application cannot be considered as a minor relocation under 500m in accordance with the Pharmaceutical regulations as the distance is over 500m. I measured the distance between the 2 sites by foot via the most practicable route using a measuring wheel to be 545m. Taking in to consideration human error and not being an expert in the field, I commissioned the services of Hulmeupright, premier architects in the area and preferred users of Stoke-on-Trent city council to substantiate or disprove these findings. Please refer to the copy of a digital map enclosed – Appendix A; Lloyds 25-27 Stoke Road (Point B) and the NEW proposed pharmacy site on Norfolk Street (Point A). Hulmeupright measured the distance between the 2 sites as 508m. (Note the digital measurement is an absolute minimum and the regulations strictly state by "foot". It is fair to assume that the distance by "foot" would be slightly greater than a digital measurement).
- 3.2 Is it a possibility that SOT PCT has measured the distance between the 2 points as a straight line and not "by foot via the most practicable route" as stipulated in the regulations?
- 3.3 May I also draw your attention to the point, that this is a site alteration to a previous application that Stoke-on-Trent city council refused planning permission (highlighted in blue – Appendix A). For reference Lloyds measured 486m and the LPC 496.65m between Lloyds, 25-27 Stoke Road and the PREVIOUS site, the NEW site is at least 50m further taking it over 500m by the applicants own admission.
- 3.4 It cannot be disputed that the distance between the 2 sites is greater than 500m therefore the application for minor relocation under 500m fails on the first criteria.
- 3.5 Lloyds 25-27 Stoke Road is located in the University quarter, the boundary runs from Stoke Train station to Cauldon Canal as defined by the City Council. Norfolk Street is not in the University quarter therefore the move is not within the same neighbourhood. One neighbourhood is populated by students the other by families.
- 3.6 The regulations require the applicant to provide the same services from the NEW premises as he provides from the EXISTING premises. The application confirms that intention and the PCT accepts it. The EXISTING premises opens 90hrs/week (Mon – Sat: 9am to 10pm, Sun: 10am to 10pm): the NEW premises will open 54hrs/week (Mon – Fri: 8am to 6pm, Sat: 9am to 1pm). To provide the same pharmaceutical services you must at least be open the same number of hours to give the local population access to those services. NO pharmaceutical services are provided when a pharmacy is CLOSED therefore the same services will not be provided. The existing premises provides Out of Hours services, the new premises will not. The existing premises provides Needle and Syringe Exchange service and Supervised Administration Schemes, our understanding is the NEW premises will not.

- 3.7 There are also barriers that could reasonably deter the reliant population from accessing the new premises if they so choose. Norfolk Street is a dead end street (Appendix B), dead end streets are not user friendly to vehicles and people do not like using them especially if they have to turn their cars around in a tight street. The footpath along Stoke Road is in a poor state of repair, RENEW Stoke have plans to update this, but in the immediate term it is an obstacle. The incline (Appendix C) on Stoke Road is steep enough to make it difficult for elderly people, pushchair and wheelchair users to get from the existing premises to the new one.
- 3.8 Thank you for considering the points above and as this specific minor relocation application under 500m does not meet the criteria stipulated in the Pharmaceutical regulations I respectfully ask the Appeal Unit to uphold this appeal.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 **STOKE ON TRENT PCT**

- 4.1.1 I write to confirm that NHS Stoke on Trent approved this minor relocation as the criteria stipulated in the Pharmaceutical Regulations were met:
- 4.1.2 The change of premises is a minor relocation under 500 metres. The distance between the two sites has been measured as 4345 [sic] metres by the most practicable route;
- 4.1.3 The proposed move is within the same neighbourhood;
- 4.1.4 The services to be provided from the new premises are the same as those provided at the existing premises;
- 4.1.5 There are no barriers which would change the accessibility of the new premises;
- 4.1.6 The provision of pharmaceutical services will not be interrupted except for such a period as the Primary Care Trust may for "good cause" allow.

4.2 **LLOYDS PHARMACY**

- 4.2.1 The Appeal Unit will be aware that only on the 2 May 2009 the FHS Appeal Unit approved an application for minor relocation from our current premises at 25-27 Stoke Road to 'land in front of the Shelton Primary Care Centre' Ref SHA/15110. It was concluded that this met the criteria for a minor relocation. Appendices D and E which I have enclosed show the location of the previous proposed site considered for Ref SHA/15110. The map and photograph on these appendices demonstrate the very close proximity of the proposed site for this current application Ref SHA/15427 to the site previously determined in case ref SHA/15110 in May 2009.
- 4.2.2 In our opinion the proposed site for ref SHA/15427 does not pose any additional difficulty to access than to the site considered in ref SHA/15110. The appellant also does not provide any evidence as to why the proposed site for Ref SHA/15427 cannot be minor in nature. The PCT stated that they measured the distance to the site at SHA/15110 to be 435 metres therefore, even taking the appellant's comments into consideration i.e. the proposed site for this application ref SHA/15427 is about 50 metres further, we can see no reason or evidence why this application is not minor in nature. Our submission is that the relocation remains minor in nature and to which the PCT agrees.

- 4.2.3 We do not believe there are any barriers between the two sites. There were no barriers between the two sites for the consideration of ref SHA/15110. Appendices D and E show the route and proximity of this current application to that of the previous site (in ref SHA/15110) and it can quite clearly be shown there are no additional barriers.
- 4.2.4 We submit that the same services will continue to be provided at the proposed site as at our current premises. We will continue to provide all essential services, advanced and enhanced services.
- 4.2.5 The photograph that the appellant includes of Norfolk Street is the area beyond the proposed site and the Primary Care Centre. The fact that it is a dead end is irrelevant. If a patient uses their car they would probably use the Primary Care Centre car park or be able to turn around in it if necessary.
- 4.2.6 In summary, there is no evidence that a patient could not undertake the journey involved to the proposed site. An almost identical application earlier this year concluded that it met all the criteria for a minor relocation. The PCT were comfortable that the application was less than 500 metres but even if the appellants' distances are considered it is still well within a distance that can be considered minor.
- 4.2.7 We submit that all the criteria for a minor relocation have been satisfied and therefore, we respectfully ask the Appeal Unit to uphold the decision of the Stoke on Trent PCT and dismiss the appeal.

4.3 SUPERDRUG STORES PLC

- 4.3.1 We would like to comment that if the distance, as stated in Kaleem's letter, is over 500m then this application should NOT be treated as an exemption application and be refused.

5 Unsolicited Comments

This is a summary of representations received on the appeal after the statutory consultation period had ended.

5.1 ANGELWAY CHEMIST

- 5.1.1 In the appeal letter presented by Mr Navid UI Khurram Kaleem on behalf of Day & Night Pharmacy, Stoke on Trent PCT was accused of failing to measure the practical walking distance between the new proposed relocation site and the existing Lloyds Pharmacy premises. Mr Kaleem also pointed out that the applicant, Lloyds Pharmacy, had admitted that the new proposed site is at least 50 metres further away from the original relocation site. This is a very serious accusation!
- 5.1.2 If Mr Kaleem is telling the truth, Stoke on Trent PCT should re-measure the distance and inform us the outcome before approval of the application.
- 5.1.3 However, the digital map produced by the architects appointed by Day & Night Pharmacy indicates that the distance between the existing Lloyds pharmacy premises and the new proposed relocation site may well be under 500 metres as their chosen start and finish point appear to be in favour of their client.

6 Observations on Representations

6.1 DAY & NIGHT PHARMACY

- 6.1.1 The distance between 2 points is absolute; it cannot be increased or decreased to suit an agenda. Hulmeupright are a reputable, independent and professional architects firm who carry out their work to the utmost accuracy and are accountable to their own regulatory bodies. They have independently surveyed the 2 locations and produced a digital map showing the distance between the 2 sites to be greater than 500m.
- 6.1.2 Please note: As shown in Figure 1: Digital Map (previously submitted), the entrance to Lloyds Pharmacy 25-27 Stoke Road is located at number **27**. The proposed entrance to the pharmacy on Norfolk Street is immediately before the entrance to the staff car park and immediately before the patient car park entrance opposite.
- 6.1.3 I respectfully ask the committee to consider evidence of measurements between the 2 sites to include, dates, by whom and how the procedure was carried out? I can say with assurity that the measurement carried out by the professionals will preside as the most accurate.
- 6.1.4 Application SHA/15110 is said to be an “almost identical” application, this is a contradiction in term, it is either identical or not. Unlike application SHA/15110 where Lloyds measured 486m, on this occasion Lloyds have not published a measurement. Is this in the hope that people will turn a blind eye? Day & Night have always agreed to factual information as it did not disagree with application SHA/15110 being below 500m.
- 6.1.5 Thank you for considering the points. As the minor relocation application under 500m ref: SHA/15427 does not meet the criteria stipulated in the Pharmaceutical regulations, I respectfully ask the Appeal Unit to uphold this appeal.

7 Consideration

- 7.1 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.
- 7.2 It also had before it the responses to the Authority’s own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee had regard to Regulation 6(1) and 6(3) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) (“the Regulations”).
- 7.5 The Committee noted the PCT’s decision on this application had been notified with a right of appeal, to Day and Night Pharmacy. Regulation 29(2) indicates that where the PCT has determined an application to which regulation 6(1) applied, the applicant and any person who has been notified of the decision under regulation 27(1)(a)(ii) or (iii) may appeal to the Secretary of State. Regulation 27(1)(a) includes ‘an application to which regulation 6 applies’ thereby (in the Committee’s view) including regulation 6(3) (minor relocation applications under 500 metres). The Committee proceeded to determine the appeal by Day and Night Pharmacy.
- 7.6 The Committee noted the appellants assertions with regard to two neighbourhoods, one being the “university quarter” and the other being residential in nature. The Committee were of the view, however, that with no information provided to show that the university quarter was not residential in nature there was no reason to believe that those resident in either area would not consider themselves to be neighbours of

one another. The Committee concluded that both locations were within the same neighbourhood, without recourse to specific boundaries.

- 7.7 The Committee noted the appellant claimed that the distance between the present and proposed location would be slightly in excess of 500 metres. However, the PCT claimed that the distance by the most practicable route had been measured at 445 metres. However given the very small area of dispute the Committee concluded that as a previous measured distance of 438 metres had not been challenged (case: 15110) it was reasonable to consider this was a minor relocation application of under 500 metres.
- 7.8 The appellant claims that there are barriers to access between the locations that would reasonably deter the reliant population. These included Norfolk Street being a dead end and thus difficult for those using cars, the state of footpaths and the incline on Stoke Road. However, no specific instances of difficulties encountered were put forward and the Committee noted in a previous similar application those factors were not put forward as barriers.
- 7.9 The Committee noted the appellant had claimed the same services would not be provided at the proposed location. However the Committee considered the assurances given by the PCT and the applicant, and had no reason to conclude this requirement would not be adhered to.
- 7.10 The Committee concluded the Regulations applicable to the application had been satisfied and that the appeal should be dismissed.

8 Decision

The Committee was of the view that the proposed change of premises was a minor relocation. Accordingly the Committee dismisses the appeal.

Jill Jackson
Appeal Officer

A copy of this decision is being sent to:

Lloyds Pharmacy Ltd
Day and Night Pharmacy
Boots UK Ltd
Superdrug Stores
Stoke on Trent PCT