

12th January 2010

REF: SHA/15467

APPEAL AGAINST WORCESTERSHIRE PCT DECISION TO GRANT AN APPLICATION BY STOURPORT HEALTHCARE LTD FOR MINOR RELOCATION UNDER 500 METRES, FROM 32 HIGH STREET, STOURPORT-ON-SEVERN DY13 8BE TO 13 YORK STREET, STOURPORT-ON-SEVERN DY13 9EF

1 The Application

By application dated 4th August 2009, Stourport Healthcare Ltd (“the Applicant”) applied to Worcestershire Primary Care Trust (“the PCT”) for minor relocation under 500 metres, from 32 High Street, Stourport-on-Severn DY13 8BE to 13 York Street, Stourport-on-Severn DY13 9EF. In support of the application it was stated:

- 1.1 The move will improve access for patients to services provided. There will be no step into the premises and the on-street provision of parking for the disabled and elderly is superior.
- 1.2 The neighbourhood served will be identical.
- 1.3 The route from the existing to proposed premises does not involve the crossing of any roads or any other hazards.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 5th October 2009 states:

- 2.1 As this is a move of less than 500 metres within the same neighbourhood, the PCT has approved the application.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 23rd October 2009, Charles Russell LLP, on behalf of York Pharmacy, appealed against the PCT’s decision. The grounds of appeal were:

- 3.1 York Pharmacy’s ground of appeal is that the PCT failed to apply the correct legal test when determining this application. In its decision dated 1 October 2009, the PCT granted the Applicant’s minor relocation application “as this is a move of less than 500m within the same neighbourhood”. In accordance with regulation 6 the PCT was additionally required to consider whether the proposed relocation is “minor”; it failed to do so. Had the PCT applied the correct legal test it would have refused the application on the grounds that the relocation is not “minor”.
- 3.2 Whether a proposed move is minor requires the decision-maker to consider “the nature and extent of the relevant consequences of the move” including “the probable affect of the relocation upon the provision of services to the population of the neighbourhood” (see the judgment of Russell LJ in R-v- Yorkshire Regional Health Authority, Ex parte Gompels and Ex parte Suri [1995]).
- 3.3 The Applicant’s pharmacy is currently located on the High Street in Stourport; this is the main shopping street in the town. Those who use the Applicant’s pharmacy at its

existing location are therefore likely to do so as part of their daily lives when they are shopping in Stourport town centre: the Applicant's current pharmacy therefore serves all those resident in and visiting the town.

- 3.4 In contrast the Applicant's proposed site is within a doctors' surgery on York Street (which is not part of the main shopping centre on Stourport on Severn). Those who will use a pharmacy at the doctors' surgery are likely to be only those patients who are registered at that GP surgery (there are two doctors' surgeries in Stourport on Severn).
- 3.5 The likely effect of the proposed relocation is that those patients who access general medical services from York Surgery (the site of the proposed pharmacy) will use the Applicant's pharmacy whether or not they currently do so and those who access the Applicant's pharmacy at its current location will change to using the Boots pharmacy on the High Street since the Boots pharmacy will be more conveniently located for them.
- 3.6 The probable effect of the relocation is, therefore, that the Applicant's pharmacy at the proposed site will not serve essentially the same population as that served by the Applicant's pharmacy at its existing site.
- 3.7 For this reason Charles Russell invite the Authority to uphold York Pharmacy's appeal and refuse this application.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 STOURPORT HEALTHCARE LTD

4.1.1 The basic premise of the appeal is factually incorrect and the Applicant believes that if the authority had checked the basic facts they would have dismissed the appeal.

4.1.1.1 The Applicant's new premises are not located within the doctors surgery in York Street.

4.1.1.2 The new premises are located 120m from the Applicant's current location.

4.1.1.3 York Street is very much still part of the main shopping centre of the town with a range of shops and services and is clearly in the same neighbourhood. The Applicant encloses a map of the area outlining what they consider to constitute the neighbourhood.

4.1.1.4 As the Applicant is only moving 120m and there are no physical obstacles, indeed it is not even necessary to cross a road between the two sites, they will continue to serve the same population.

4.1.1.5 The map supplied exaggerates the distance from the Applicant's current to the new premises.

4.1.2 In summary the Applicant can see no basis in fact for this appeal, and request it be summarily dismissed.

4.2 BOOTS UK LTD

4.2.1 At this time Boots have no further comments in addition to any submitted to the PCT. Boots may however wish to make further representations at a later stage and attend any oral hearing that may be held.

4.3 WORCESTERSHIRE PCT

4.3.1 At its meeting on 17 September 2009, Worcestershire PCT's Dispensing & Pharmacy Practices Committee took the view that this was a minor relocation because the new site was within a very short walk, with no need to cross the road, or with any other obstructions. An officer of the PCT had walked from the current site to the proposed location and it had taken 2-3 minutes. There was no discernible effect, therefore, on service to the population.

4.3.2 The shopping district of Stourport encompasses Bridge Street, High Street, York Street and extends into Lombard Street, including both the present and the proposed location of this pharmacy.

4.3.3 The objector's solicitors are mistaken in their assertion that the proposed site is within the doctors' surgery, which is in fact on the opposite side of York Street.

4.3.4 The PCT therefore maintains that this is an appropriate minor relocation.

4.4 MATRIX PRIMARY HEALTHCARE

4.4.1 Matrix would reiterate the comments made by Charles Russell who are acting for York Pharmacy. Matrix believe the above application should be refused for the following reasons:

4.4.1.1 The PCT failed to apply the correct legal test when determining the application.

4.4.1.2 The applicant's pharmacy will not be serving the same population from the proposed site as that served from the existing site.

4.4.2 Matrix therefore invite the NHSLA uphold the appeal and refuse this application.

4.5 STOURPORT HEALTHCARE LTD

4.5.1 As stated previously the appeal received is factually incorrect and the applicant requests that the Authority dismiss it at the earliest opportunity.

4.5.2 To help clarify the minor nature of this relocation please find enclosed a larger scale map which shows the current and proposed locations with greater clarity. This refutes any suggestion that the relocation is not minor.

4.5.3 This is the most minor of relocations. The distance involved is 120m, there are no physical barriers and it is not even necessary to cross a road.

4.5.4 The appeal received is totally based on the claim that the applicant wishes to relocate within the doctors' surgery on York Street. This is factually incorrect. The applicant will be located on the opposite side of the road to the surgery. The applicant will be readily accessible to patients' of both surgeries, as they are now.

4.5.5 The applicant will still be located in one of the main shopping streets in the town with a range of shops & services.

4.5.6 The applicant will still be located in the same neighbourhood and they will still serve the same population.

4.5.7 The applicant trusts that, with this further information, that the Authority will satisfy itself that the application fully fulfils the criteria for a minor relocation within the same neighbourhood.

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 York 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 York Pharmacy.

5.6 The Committee dealt with the application by way of reconsideration of all the issues.

5.7 The Committee firstly noted that the grounds of appeal rely mainly on the proposed site being within the York House Surgery on York Street. The Committee noted that the applicant and PCT have confirmed that the proposed site is on the opposite side of the street from the surgery. The Committee noted that no further comment on this matter had been received from the appellant. The Committee proceeded to consider the relevant issues.

5.8 The Committee noted that whilst the PCT had not defined a neighbourhood, it had determined that the existing and proposed sites were within the same neighbourhood. The Committee noted the applicant's proposed neighbourhood and also had regard to comments stating that York Street provides a range of shops and services and is considered part of the shopping district where the existing pharmacy is based. The Committee further noted that the distance between the two sites is stated by the applicant to be 120 metres and the PCT comment that the walk takes 2-3 minutes. The Committee noted that the appellant states that York Street is not part of the main shopping area however in the absence of any reasoning or further dispute the Committee were content to accept that the existing and proposed sites are within the same neighbourhood.

5.9 The Committee had been provided with no information to suggest the existence of any barriers between the existing and proposed sites, and noted that there are no roads to cross since they are on the same side of the road.

5.10 The Committee noted comments that the proposed pharmacy would not be serving the same population as the existing site. The Committee accepted that patients of the York House Surgery may find the proposed site more convenient however saw no information to suggest that the population in respect of the existing site, whether

patients of the surgery or not, would not find the proposed site as conveniently accessible.

- 5.11 The Committee noted that the provision of services would be continuous and there was no information to suggest that the same services would not be provided at the proposed site.

6 **Decision**

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

Abby Richards
Appeal Officer

A copy of this decision is being sent to:

Stourport Healthcare Ltd
Charles Russell, on behalf of York Pharmacy
Worcestershire PCT
Boots UK Ltd
Matrix Primary Healthcare