

8 December 2009

**REFS : SHA/15361**

**APPEAL AGAINST REDCAR AND CLEVELAND PCT  
DECISION TO REFUSE AN APPLICATION BY MR  
ZULFIQAR RAFIQ FOR PRELIMINARY CONSENT  
PRIOR TO INCLUSION IN THE PHARMACEUTICAL  
LIST AT HIGH STREET, LINGDALE, SALTBURN BY  
THE SEA, TS12 3DZ**

**1 The Application**

By application dated 10 January 2009, Mr Zulfiqar Rafiq ("the applicant") applied to Redcar and Cleveland Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at High Street, Lingdale, Saltburn by the Sea, TS12 3DZ. In support of the application it was stated:

- 1.1 The proposed new pharmacy will be located in the neighbourhood as defined:
  - 1.1.1 To the North: Green Road to Trout Hall Lane
  - 1.1.2 To the East: Stranghow Road
  - 1.1.3 To the West: A173
  - 1.1.4 To the South: A171
- 1.2 For the purpose of this application the neighbourhood will be defined as Boosbeck/Lingdale. A map of the proposed neighbourhood is attached with clearly defined boundaries.
- 1.3 The nearest Pharmacy to the proposed site is T Kingston Pharmacy in Skelton and this is over 2 miles away.
- 1.4 There is a medical practice in Lingdale and this provides medical services for two hours each morning during the week.
- 1.5 The current provision of pharmaceutical services in the area is inadequate; therefore I believe the proposed application is both necessary and desirable to secure an adequate provision of pharmaceutical services within the vicinity.
- 1.6 According to the National statistics 2006 the population of Boosbeck/Lingdale was 3358
  - 1.6.1 20% of this population was under 15
  - 1.6.2 59.5% of this population was between 16 and retirement age
  - 1.6.3 20.5% of this population was above the retirement age
- 1.7 I believe the present pharmaceutical service in the defined neighbourhood is inadequate for the following reasons:

- 1.7.1 Over a fifth of the residents are above the retirement age. Travelling to and from the nearest pharmacy is not desirable as it is over two miles away. On dark afternoons and especially in winter it may not be possible for the majority of this population sub group to access pharmaceutical services.
- 1.7.2 Patients with children who may only require a simple remedy for themselves or their children have to travel over 2 miles to obtain the service.
- 1.7.3 The proposed pharmacy would be located on the high street close to the Doctors surgery and near to the post office and small cafes.
- 1.7.4 The fact that there is no pharmaceutical service in the defined neighbourhood enhances the need for there to be a pharmacy.
- 1.7.5 A pharmacy would provide this community choice and above all convenience.
- 1.7.6 While some of the population is motorized, this is by no means a reflection of the entire community. The high elderly profile often produces the heightened need for medication and travel difficulties.
- 1.8 I intend to provide all essential, advanced and enhanced services as commissioned by the PCT. Furthermore, I also intend to provide other services such as:
  - 1.8.1 Various diagnostic services
  - 1.8.2 Smoking Cessation service
  - 1.8.3 Collection and delivery service
  - 1.8.4 Care home services
  - 1.8.5 Emergency hormonal contraception(PGD)
  - 1.8.6 Minor ailment scheme
- 1.9 The proposed new pharmacy will be on the front line in providing services relating to health promotion and will be proactive in improving the lives of those around the pharmacy and the wider population.

## 2 The PCT Decisions

The PCT considered and decided to refuse the application. The decision letter dated 17 August 2009 states:

- 2.1 I must advise that, following consideration, your application has been rejected. The relevant report of the PCT's decision making meeting is appended for your information.

Extract from the report:

- 2.2 On 15 January 2009, an application was received from Mr Zulfiqar Rafiq for preliminary consent for inclusion in the pharmaceutical list to provide services from a new pharmacy situated at The Chemist, High Street, Lingdale, Saltburn by the Sea, TS12 3DZ.
- 2.3 As the application was not exempt from the requirements of the necessary or desirable test, as specified by Paragraph 12 of the NHS (Pharmaceutical Services)

Regulations 2005, consultation was carried out in accordance with the requirements of paragraph 23(2) of the regulations.

- 2.4 The Panel were informed that Lingdale had been determined by Redcar & Cleveland PCT to be in a rural location. If an application is received that falls into an area identified as 'rural' the Panel are required to determine how many patients were on the GP lists the day the application was received, within a 1.6km radius of the proposed pharmacy site. It was noted that in this case the amount of patients within 1.6km of the location on the day the application was received was 2359. This information was downloaded from Exeter, and therefore the proposed area is classed as a 'reserved location'. The Panel confirmed that as this was a reserved location they would not be required to consider the prejudice test.

#### Review of Application: Determination Regarding Oral Hearing

- 2.5 The Panel reviewed the application and correspondence received during the consultation process and, after consideration, determined that there was not requirement for an oral hearing in order to determine the application. [sic]

#### Site Visit

- 2.6 Prior to the meeting, members of the Panel visited the proposed site and noted the following:
- 2.7 The applicant had not specified an exact location within the High Street and the High Street is approximately a mile in length. The Panel therefore recorded that the site considered most likely for the pharmacy was located near a cluster of shops towards the top end of the High Street near to Stanghow Road. Spaced out along the High Street are a Post Office, Newsagent, Hairdressers, Take Away, Social Club, Pub, Clinic, Fruit & Vegetable shop, Youth Club, and Pet Shop. Just off the High Street there is also a Village Hall and a Car Sales Centre.
- 2.8 The High Street is easily accessible by car, and on foot by local residents. There is a small free car park at the top end of the High Street and roadside car parking along the High Street.
- 2.9 A number of people were observed, at the time of visit, using the local bus service to take them into the larger towns, of Guisborough and Middlesbrough.
- 2.10 There is a GP 'clinic' at one end of the High Street which offers services from Hillside Medical Centre in Skelton and from Brotton Surgery. Hillside Medical Centre operates from the clinic Mon-Fri, 9am-12noon. Brotton Surgery operates from this clinic Mon, Wed, Fri, 12noon-1pm. All appointments must be booked through the main practice appointments systems.

#### Information considered in addition to the site visit

- 2.11 The nearest pharmacy to the vicinity proposed in the application is T Kingston Pharmacy at Hillside Medical Centre, Windermere Drive, Skelton, TS12 2TG. The distance between the existing pharmacy and the vicinity proposed by the application was considered to be a distance of 2.5 miles by car
- 2.12 The nearest full time GP premises are located at Hillside Medical Centre, Windermere Drive, Skelton TS12 2TG. The distance between this practice and the vicinity proposed by the application was considered to be a distance of around 2.5 miles by car.

#### Consideration of the Application

- 2.13 The Panel proceeded to consider the Application under the NHS Pharmaceutical Services Regulations 2005, as amended (“the Regulations”), paragraph 12. The Panel had regards 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).
- 2.14 The Panel considered the information provided by the applicant and the representations received as part of the statutory consultation process from:
- 2.14.1 Helen Whitcombe, NHS Contract Manager, Boots UK Ltd
  - 2.14.2 Mr SD Savage, Pharmacist / Proprietor, Kingston Pharmacy, Hillside Medical Centre
  - 2.14.3 Charlotte Jarrett, Assistant NHS Contracts Manager, Lloyds Pharmacy
  - 2.14.4 SK Morgan, Estate Development Manager, The Co-operative Pharmacy
  - 2.14.5 Mr Brian Morgan, Secretary LPC

#### Determination of Neighbourhood

- 2.15 The PCT Panel noted the neighbourhood proposed by the Applicant being:
- 2.15.1 North: Green Road to Trout Hall Lane
  - 2.15.2 East: Stanghow Road
  - 2.15.3 South: A171
  - 2.15.4 West: A173
- 2.16 The Panel considered the neighbourhood proposed by the applicant, comments from respondents, and the site visit. The Panel were advised that there was no record at the FHSA of any neighbourhood having been defined previously.
- 2.17 The Panel noted that the neighbourhood proposed by the applicant had not included a housing estate at the East side of Lingdale. Panel members considered the inclusion of a large amount of ‘countryside’ in the neighbourhood, which did not have any housing, or other need, to be unnecessary.
- 2.18 Following discussion, the Panel agreed that the neighbourhood for this application should be established as follows:
- 2.18.1 North: Cleveland Street
  - 2.18.2 East: Stanghow Road to Claphow then across fields to Little Moorsholm Farm then back across fields (forming a triangle shape) to Low Stanghow Road
  - 2.18.3 South: Low Stanghow Road
  - 2.18.4 West: Birkbrow

#### Necessary or Desirable Test

- 2.19 Having defined the neighbourhood, the Panel then considered the criteria of necessary or desirable as set out in paragraph 12 of the Regulations.
- 2.20 The panel noted the absence of an up to date PCT Pharmaceutical Needs Assessment, nevertheless the Panel considered each of the factors specified under Regulation 12, and also used the guidance to the Regulations as a checklist. In addition to information provided in the application, this included consideration of the responses to the consultation and other information available to the Panel which was

considered relevant to determination and other adequacy of existing provision (including choice of provider and services) and the necessary or desirable test.

2.21 The Panel determined:

The current level of access within the neighbourhood to the NHS pharmaceutical services the applicant proposed to provide.

2.22 The Panel noted that there are no pharmacies within the neighbourhood and thereby no PhS, LPS or directed services in the neighbourhood. It was also noted that it is not axiomatic that a pharmacy is required to be located within a neighbourhood in order to secure adequacy of pharmaceutical provision. The Panel considered the current level of provision of pharmaceutical services, and the access to them, and determined that given the rural nature of the neighbourhood, services are considered by the population of the neighbourhood to be adequately provided by existing pharmacies.

The extent to which services in the neighbourhood already offer a choice to patients which may be improved by the provision of additional facilities

2.23 The Panel acknowledged that there is no pharmacy in the neighbourhood and therefore that the introduction of a new pharmacy would offer an alternative source of pharmaceutical services to the neighbourhood. The panel considered that although there is no pharmacy in the neighbourhood, there are two just outside the boundary; one to the North West and the other to the North East. There were no indications that the applicant would be providing any additional services to these pharmacies. The Panel also acknowledged that the clinic in Lingdale has dispensing doctors, and that the Hillside pharmacy currently provides an un-contracted delivery service.

The extent to which there is reasonable choice of providers in the neighbourhood which may be improved by additional providers.

2.24 The Panel again acknowledged that there is no existing pharmacy located in the neighbourhood and therefore the introduction of a new pharmacy would offer an alternative provider to the neighbourhood. However, whilst having particular regard to the issue of choice, it is clear that in this case, taken with all other evidence, there is considered to be adequate provision of pharmaceutical services to the neighbourhood. The population have, and make use of reasonable choice of both provider and services from pharmacies just outside the neighbourhood. The Panel felt that choice would not be improved greatly by an additional pharmacy offering the services included in the application, considering all the other factors that impact on the determination of this application and the weight which might be applied to them.

The extent to which current service provision in the neighbourhood is adequately responding to the changing needs of the community it serves or to local PCT delivery plans designed to meet primary care policy objectives.

2.25 The Panel was advised that the community of Lingdale was fairly constant and is unlikely to grow. The Panel acknowledged that although there has been a recent housing development (50) in Boosbeck, which is a neighbouring village, and which is also included in the neighbourhood, no complaints had been received from patients or public regarding service provision or inadequacy of services and this small change in population is insufficient to conclude existing provision might now be inadequate.

2.26 The Panel also acknowledged that there is a new Nurse Led walk in centre opening in Skelton, but added that as this is not in the neighbourhood it is unlikely to have an impact on this application.

The extent to which the applicant proposes to improve service provision in the neighbourhood through innovation or new directions in delivery.

- 2.27 The Panel were satisfied that there was no evidence of innovation or new directions in delivery of service identified in the application. The applicant was not offering any additional hours to those currently available in the surrounding area. The Panel were advised that all existing pharmacies respond to PCT directions for Sunday / Bank Holiday rotational cover.

The extent to which the application will meet the need for specialist or other services which improve the provision of, or access to, services for example to specific populations or vulnerable groups.

- 2.28 Nothing of this nature was identified in the application.

The assessment of the overall impact on the neighbourhood in the long term.

- 2.29 The Panel was satisfied that the current level of provision in the neighbourhood was adequate to meet both current and longer term needs. Additionally there was no evidence presented to suggest that the existing pharmacies outside the neighbourhood would not be able to respond adequately to any change in pharmaceutical need as identifiable at this point.

- 2.30 Having contacted the Lingdale Clinic providers, the Panel were informed that although there are weekly sessions planned, patient attendance is variable and therefore the clinics do not always go ahead if there are no bookings. Patients are known to opt / prefer to choose to travel to Skelton / Brotton for the medical services offered at the main practices as opposed to the clinic. The Panel therefore felt that patients are able to access pharmaceutical services in those same locations. If the status quo is that even when offered the convenience of local services, patients are opting to travel, there is no reason to suggest that this would not be the same for pharmaceutical services provision.

#### Decision

- 2.31 The Panel concluded that for the reasons outlined above, the applicant has failed to demonstrate that a new pharmacy within the above neighbourhood is either necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood according to Paragraph 12 of the NHS (Pharmaceutical Services) Regulations 2005. The Panel therefore determined that this application be rejected.

- 2.32 Application rejected

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 7 September 2009, Mr Zulfiqar Rafiq appealed against the PCT's decision. The letter states:

- 3.1 I disagree with the PCT panel's view that the current provision in the neighbourhood was adequate to meet both current and immediate needs. This is despite the fact that the panel themselves state there is no pharmacy currently in the neighbourhood.
- 3.2 The nearest Pharmacy is 2.5 miles away and this is too far for residents who do not have transportation and an inconvenience and cost to those waiting for public transport.
- 3.3 There is a GP clinic in the neighbourhood and by having a pharmacy nearby both would be accessed more regularly as these services are complimentary and convenient for patients using them.

- 3.4 The application covers not just Lingdale but also Boosbeck and the surrounding areas. As the PCT has noted there is a development in the area that will further increase the population to beyond the current 3358.
- 3.5 The PCT acknowledge a new Pharmacy would offer an alternative source of pharmaceutical service to the neighbourhood. The alternative is outside the defined neighbourhood and also 2.5 miles away.
- 3.6 The local Councillor Steve Kay supports the application and has said that the locals would welcome a new Pharmacy especially as there used to be one in the area in the past.
- 3.7 There is a new Nurse led walk in centre opening in Skelton, this indicates that in the area as a whole the medical provision is inadequate and a Pharmacy in the defined neighbourhood would be desirable.
- 3.8 Patients currently don't opt/prefer to go to Skelton / Brotton for their medical and pharmaceutical provision. They really have no choice but to go to these far of places. By having a Pharmacy nearby the GP clinic, patients will be empowered to decide when and where to access their service of choice.
- 3.9 I, the local councillor Steve Kay and the local population believe there is a need and a desire for a Pharmacy in this location and therefore appeal against the PCTs decision to refuse the application.

#### 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 LLOYDS PHARMACY

- 4.1.1 Further to the appeal, I would on behalf of Lloyds Pharmacy Limited wish to maintain the comments made in our initial letter to the PCT dated 14 April 2009 that the addition of a further chemist contractor cannot be considered necessary or desirable in order to secure the adequate provision of NHS pharmaceutical services to the area.
- 4.1.2 We therefore respectfully ask that the Appeal Unit uphold the decision made by Redcar & Cleveland PCT and thereby dismiss the appeal.

##### 4.2 KINGSTON PHARMACY

- 4.2.1 I believe the PCT panel's decision to reject this application was correct because the population of Lingdale and surrounding areas have more than adequate pharmaceutical services available and they have no difficulty accessing these services. There has not been a pharmacy in Lingdale before. A pharmacy in this area is not viable and not necessary as the population is too small. The defined area in the application is predominately unpopulated countryside.
- 4.2.2 As it is a rural location patients have a doctors dispensing service available to them. In addition the population of Lingdale, Boosbeck and all surrounding areas have access to a daily delivery service from Skelton Pharmacy which enables them to obtain prescriptions and other medicines without leaving the comfort of their homes. The majority of patients in this area visit GP's in Skelton or Brotton where there are full pharmacy services close by.

4.2.3 For these reasons a pharmacy in Lingdale is neither necessary nor desirable.

## 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 Regulations 35(1) reserved locations, and 12(1), the necessary or desirable test. In considering the latter test, it had regard in particular to Regulation 12(2) 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 no appeals had been received against the PCT's decision to accord Lingdale reserved locality status. The Committee was satisfied that Lingdale would be accorded such status.
- 5.7 The Committee was mindful that although the application is in a controlled locality, its decision on reserved location status means the 'prejudice to proper provision' test does not apply. The population in the neighbourhood who are included on dispensing doctors lists will be able to continue to receive dispensing from their dispensing doctor or from a pharmacy.
- 5.8 The Committee noted that the neighbourhood defined by the PCT had not been disputed on appeal, however the applicant had provided two neighbourhoods in his application form, the second being Boosbeck/Lingdale. While the Committee had reservations as to the extent of the neighbourhood defined by the PCT due to its size, much of which seems to be unpopulated countryside, they were also unsure as to whether those in Boosbeck would consider themselves to be neighbours of those in Lingdale. In the absence of any alternative neighbourhood either on appeal or in representations, the Committee accepted the neighbourhood defined by the PCT without recourse to specific boundaries or prejudice to any future applications.
- 5.9 The Committee noted that there was currently no pharmaceutical provision within the neighbourhood. The Committee was of the view that it was not axiomatic that a contract is needed within a neighbourhood presently containing no pharmacy in order to ensure that patients have adequate pharmaceutical services. It is a fact that there is no choice in Lingdale. The Committee had regard to other contractors on the pharmaceutical list and noted that there was one in Skelton and one in Brotton, both located in the vicinity of existing medical practices. The Committee viewed the provision of pharmaceutical services from outside the neighbourhood to be marginal.
- 5.10 The Committee noted the comments from both the applicant and the PCT with regards to the clinic that was currently operating in Lingdale by both of the nearest surgeries. The Committee noted that Lingdale is a notable distance from the nearest pharmaceutical services and that it is unlikely that such a journey would be undertaken on foot. The Committee noted the comments with regard to public transport, however noted that no information had been provided with regard to the frequency or the routes of this particular service. The Committee noted that there was no information with regard to private transport, but in any event a journey would still need to be undertaken.

- 5.11 The Committee determined that access to and reasonable choice of pharmaceutical services by those on the pharmaceutical list was not adequate for the population that had available to it a primary medical facility, albeit a limited one, and thereby the likelihood of a need for pharmaceutical services.
- 5.12 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing absence of a pharmacy within that neighbourhood with the provision of pharmaceutical services outside the neighbourhood, in particular by way of access and a reasonable choice of provider, given that a purpose of being in that neighbourhood may be to access primary medical services from which pharmaceutical services may be required by the reliant population, then the Committee determined that pharmaceutical services were not currently secured to the extent that it was desirable to grant the application.

## 6 Decision

Accordingly, the Committee is of the view that it is desirable for a pharmacy and allows the appeal accordingly.

**Jill Jackson**  
**Appeal Officer**

A copy of this decision is being sent to:

Mr Z Rafiq  
Lloyds Pharmacy  
Boots UK Ltd  
The Co-operative Pharmacy  
Kingston Pharmacy  
Cleveland LPC  
North East Family Health Services Agency on behalf of Redcar and Cleveland PCT