

**APPEAL AGAINST WOLVERHAMPTON CITY PCT  
DECISION TO REFUSE AN APPLICATION BY  
PHARMAUNISON LTD FOR PRELIMINARY CONSENT  
PRIOR TO INCLUSION IN THE PHARMACEUTICAL  
LIST AT NEW STREET, ETTINGSHALL,  
WOLVERHAMPTON**

**1 The Application**

By application dated 29 April 2009, Pharmaunison Ltd ("the Applicant") applied to Wolverhampton City Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at New Street, Ettingshall, Wolverhampton. In support of the application it was stated:

Neighbourhood

- 1.1 To the North: A41 Bilston Road.
- 1.2 To the West: Railway line.
- 1.3 To the South: A4039 Millfieldss Road.
- 1.4 To the East: B4162 Wolverhampton street.

Necessary and defined neighbourhood.

- 1.5 The defined area contains many flats, apartments and a mixture of houses. The area indicated does not occupy any Pharmacy at present but has been allocated for a new General practice from the Wolverhampton Primary Care Trust that will provide a patient list of around 6,000 patients. Therefore, a Pharmacy contract is necessary in order to secure adequate Pharmaceutical services in the neighbourhood. There has also been an approved outline planning application for at least 520 dwellings at the Land to the east of Ettingshall Road and east and west of Ward Street within the proposed area, the developers include Persimmon homes.

Choice and desirability

- 1.6 There is currently no Pharmaceutical provision within the neighbourhood, therefore there is no reasonable choice of Pharmaceutical services. All Pharmaceutical services are located over 1.0 mile away by any accessible route from the proposed location, making the application desirable.
- 1.7 Pharmacies are located (by accessible routes) in:
  - 1.7.1 Mayfield (Mayfield Pharmacy being the closest) 1.9 mile away, accessible with barriers including one main road to cross and the Wolverhampton to Birmingham Tramline to cross.
  - 1.7.2 Bilston (Co-operative Pharmacy being the closest) 1.3 miles away, accessible with barriers including one main road and a busy high street to cross and a tramline bridge or canal bridge crossing.
  - 1.7.3 Parkfields (Pheonix Pharmacy being the closest) 1.2 miles away, accessible with barriers including canal bridge, railway line bridge and 2 main roads to cross.

Supporting evidence of the application being necessary and desirable

- 1.8 The neighbourhood includes a population towards the north of the boundary and a population towards the south of the boundary. The new housing development will be placed in between these populations.

Population towards the north of the boundary

- 1.9 According to the 2001 census, general health of the population being not good (13.99%) is higher than the average for Wolverhampton (all wards) (11.68%), West Midlands (9.73%) and England (9.03%). People with limiting long-term illnesses (26.43%) and of working age with long-term limiting illness (21.60%) is also higher than for Wolverhampton (all wards) (21.17 and 16.11% respectively), West Midlands (18.86% and 14.16% respectively) and England averages (17.93% and 13.29% respectively). People providing unpaid care for 20-50 hours a week (45.35%) is higher than the whole of Wolverhampton (37.39%), West Midlands (33.01%) and England averages (31.36%). Many young children regularly require Pharmaceutical services. The percentage of children 0-7 years old (11.09%) is also higher in this area than the Wolverhampton (all wards) (9.82%), West Midlands (9.89%) and England averages (9.70%). The percentage of houses rented from the council and the housing association was 53.3%, indicating very high social housing for the north of the area.
- 1.10 According to the 2001 census 53.43% (more than half) the population to the north of the area have no car or van. The time taken to walk from the proposed location to the nearest Pharmacy is around 30 minutes crossing main roads with steep inclines making it very dangerous for disabled, elderly and parents with small children, this would be a one hour round trip from the area to the surgery to a Pharmacy and back home again. Access to pharmaceutical services is clearly difficult as it would only be possible by car or public transport, incurring costs.

Population towards the south of the boundary

- 1.11 According to the 2001 census general health of the population being not good (21.79%) is also higher than the average for Wolverhampton (all wards) (11.68%), West Midlands (9.73%) and England (9.03%). People with limiting long-term illnesses (31.99%) and of working age with long-term limiting illness (23.61%) is also higher than the Wolverhampton (all wards) (21.17 and 16.11% respectively), West Midlands (18.86% and 14.16% respectively) and England averages (17.93% and 13.29% respectively). People providing unpaid care for 20-50 hours a week (49.74%) is also higher than the whole of Wolverhampton (37.39%), West Midlands (33.01%) and England averages (31.36%). This population clearly shows many factors of where access to Pharmaceutical services would be desirable.

Services

- 1.12 Easy and convenient access to pharmaceutical services is supported by a white paper published by the Department of Health in 2000 called Pharmacy for the future implementing the NHS Plan. Ensuring that patients can get medicines and/or pharmaceutical advice easily and conveniently was one of the challenges set out here.
- 1.13 The Pharmacy will provide all essential, advanced and enhanced services commissioned by the Primary Care Trust. The Pharmacy will also provide an extensive range of services including minor ailments, repeat dispensing, everyday collection and delivery, blood pressure testing, medicine use reviews, supervised methadone, needle exchange, smoking cessation and emergency contraception.
- 1.14 The minor ailments scheme will help many patients in areas such as this as it will relieve the General practitioners from treating minor illnesses where a Pharmacist

can provide treatment. The Pharmacy will stock an extensive range of General sales list (GSL) and Pharmacy (P) medicines for a large range of conditions. There is no Pharmacy within 1.6 miles of the proposed location open from 8am in the morning as proposed by the application, the Pharmacy will vary the later opening times to accommodate the opening times of the new surgery in Ettingshall.

- 1.15 A new Pharmacy contract in the neighbourhood is therefore necessary and desirable according to the NHS regulations 2005 to secure adequate provision of Pharmaceutical services, to improve access, adequacy and reasonable choice to patients and residents in and around the area.

## 2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 11 August 2009 states:

### Statement of Reasons

- 2.1 The applicant proposed to provide all essential services, advanced and enhanced services as commissioned by the Primary Care Trust. The applicant had provided a covering statement with his application.
- 2.2 Interested parties had been notified of the application and representations had been received from:
- 2.2.1 Superdrug Pharmacy
  - 2.2.2 Lloyds pharmacy
  - 2.2.3 Wm Morrisons Pharmacy
  - 2.2.4 Parkfield Pharmacy Ltd
  - 2.2.5 Boots Pharmacy
  - 2.2.6 Wolverhampton LPC
  - 2.2.7 Dudley LPC
- 2.3 All correspondence submitted to the PCT had been copied to the applicant and those that had made representation. Notified parties made no further comment but the applicant had taken the opportunity to submit a letter of support from a neighbourhood group.
- 2.4 The PCT gave due consideration to the application form and supporting letter that Pharmaunison Ltd had submitted and also to the correspondence received from interested parties. However, the PCT felt that the additional letter submitted by the applicant should have been included in his original submission as interested parties had not had sight of the letter and therefore not had the opportunity to comment on it.
- 2.5 The proposed neighbourhood as defined by the applicant was to the North the A41 Bilston Road: to the West the Railway line: to the South the A4039 Mill Road: to the East the B4162 Wolverhampton Street.
- 2.6 The PCT determined that it could not adopt the proposed defined neighbourhood. The PCT felt that that the applicant had been restrictive in the definition of the location. The applicant had included limited residential accommodation and a significant proportion of derelict land and factory units. Therefore the PCT agreed that the neighbourhood should be extended to the Black Country Route in the East.

- 2.7 The small row of shops in which the proposed pharmacy would be located consisted of a small convenience store, a hairdresser, two take-aways, a café and an off-licence. The PCT thought it most likely that these outlets were ones that would not be accessed on a daily basis and it was also noted that there had been three site visits at differing times and each time the location was found to be very quiet with little or no activity.
- 2.8 The applicant stated that there was approved outline planning permission to build new dwellings in the area but the panel felt that, in the current economic climate, that there may be a delay in any regeneration of the area as there was no evidence to suggest that building would be taking place in the immediate future.
- 2.9 The PCT considered the recent opening of the new GP surgery located several minutes walk from the proposed site and the positive impact it would have on the surrounding population. However, the PCT could not concur with the applicant's statement that the opening of a surgery meant that it was therefore necessary for a pharmacy contract in order to secure adequate pharmaceutical services in the neighbourhood. The applicant had not given any indication of how he could work with the surgery in order to add value to the delivery of healthcare to patients.
- 2.10 The PCT discussed the range of services and the hours of opening currently available to patients by existing pharmacies within the general area. There were fourteen pharmacies within 2 kilometres of the proposed site and six pharmacies in Bilston. In accordance with National Health Service Pharmaceutical Regulations all were providing essential services and a full range of advanced and enhanced services including prescription collection and delivery services, emergency contraception, minor ailments and medicines use review. There are pharmaceutical services provided every day of the week in Bilston and also there is a 100hour pharmacy on Parkfield Road which is in the general area.
- 2.11 The PCT went on to discuss the accessibility to pharmaceutical services and if there was adequate patient choice. The proposed site is in a long established area and therefore the PCT thought it likely that patients had long established arrangements for accessing pharmaceutical services. It was agreed that there were good public transport links into Bilston with a bus service into the town centre and a bus service into Wolverhampton. Within a 100yards of the proposed site was a Metro station. This also went directly into Bilston Town Centre and then on to Birmingham in one direction or into Wolverhampton in the opposite direction. Local knowledge indicated that residents living in and around the periphery of Bilston town centre accessed all the services they required from within the town. There were several healthcare providers — GP's, Dentists, Opticians and Pharmacists; an abundance of retail outlets of every description, Post Office, Council Offices, Library, Banks, Building Societies, large Supermarkets, Indoor and Outdoor Market, large DIY Stores, Swimming Baths, Museum etc. Pharmacies within Bilston were Lloyds, Superdrug, The Co-operative Pharmacy, Wm Morrison Pharmacy and two Boots Pharmacies.
- 2.12 It was also mentioned that those patients wishing to access Emergency Hormonal Contraception sometimes prefer to retain anonymity and having a choice of pharmacy is a preferable option to them rather than going to a small local pharmacy.
- 2.13 In reaching a determination the PCT considered all the information submitted by the applicant and parties that had made representation. The PCT also took into account that there was, at that time, no confirmed information available to suggest that there would be any regeneration in the area in the immediate future. If new dwellings were built in the future there was no evidence to suggest that existing pharmacies could not meet any additional demand in pharmaceutical services. It was agreed that the Bilston area had been identified as being under doctored and this had factored in the decision to site a GP led Health Centre in Ettingshall and a further large Medical Centre in Bilston Urban Village.

- 2.14 Members of the PCT felt that the applicant was restrictive in the definition of the neighbourhood and had only included a very small proportion of residents. There had been no substantive evidence submitted by the applicant to prove that the pharmaceutical needs for the area were not adequate. The hours and services proposed by the applicant were not in excess of any currently provided by existing pharmacies in the vicinity.
- 2.15 The PCT therefore determined that the application for preliminary consent submitted by Pharmaunison Ltd for proposed premises in New Street, Ettingshall should be rejected as on the evidence available it could not concur that it was either necessary or desirable to secure adequate pharmaceutical services in the area.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 1 September 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The Wolverhampton PCT have clearly not decided this application taking into account the necessary and desirable criteria.
- 3.2 The PCT have said the neighbourhood had been restrictive in definition to the location, and limited residential accommodation had been included, the PCT therefore conveniently added an area from a separate Ward (Bilston East) from Ettingshall and also included the Bilston town centre with not much more residential accommodation and over a mile away by any accessible route from the proposed location. Housing to the east of Wolverhampton Street is of a different character and was built at a different time to that of the west of Wolverhampton Street. It was clearly noted that a large scale development in this area and the new medical centre would provide the residential provision and demand for a Pharmacy in the neighbourhood originally mentioned.
- 3.3 According to the 2001 census the population to the north of the boundary is approximately 1623 and the population to the south of the boundary is approximately 1228. The increase from the new developments will be approximately 1300 with an overall population size of around 4151 people. Also around 6000 people should be registered at the new medical centre demanding a local Pharmacy. The Wolverhampton PCT have only added approximately 1000 people to the population size by including the area to the east of Wolverhampton Street (from a different Ward) up to the Black country route. (Data obtained from lower layer super output and output areas within Wolverhampton according to the 2001 census).
- 3.4 In the original application, it was mentioned that a new Pharmacy was necessary because a new GP surgery had opened. This was not meant to be the only criteria for the application being necessary as indicated further in the letter - the supporting evidence of the application being necessary and desirable. The PCT mis-interpreted this as being the only criteria of necessary for a new Pharmacy in the area, this was just one point for being necessary which was expanded with reasons further down the application, which was not taken into account by the PCT.
- 3.5 The Wolverhampton PCT refused the application on the basis of having Pharmacies close to the application location. However the nearest Pharmacy from the location is 1.85km by road, clearly not close to the community around the proposed location and the patients visiting the Ettingshall medical practice. They mention 14 Pharmacies within 2.00 km of the proposed site but this is a radius measurement and not by any defined route. 11 of the 14 Pharmacies are over 2.00 km by any accessible route leaving 3 Pharmacies located between 1.85km and 1.96km by any accessible route from the proposed location. Patients travelling from Thorn Street, Briarwood Close and Pembroke Avenue would have to travel over 1.85 km to get to their nearest Pharmacy. No consideration was given to barriers to services including bridges,

distances, inclined walks and busy high street crossings. All Pharmaceutical services are currently located outside the neighbourhood.

- 3.6 Having a Pharmacy 1.85 km away does not provide choice as it stands but the next closest Pharmacy is 1.95 km away by road from the proposed location. Pharmaceutical advice and services are required close to the community. Wholly adequate Pharmaceutical services are not provided to this neighbourhood by reason of distance. A round trip of 3.6km is required for patients from the shops in New Street to the nearest Pharmacy, the journey back using any route taken would also involve walking up a steep incline. Distance alone represents a significant barrier, particularly from people with long term limiting illnesses of over 25% within the neighbourhood.
- 3.7 No consideration was given to opening times as there was no discussion on how the new Pharmacy which would open from 8am would benefit many surgeries around Bilston including the new Ettingshall medical centre. This would increase Pharmacy access times within the PCT as many of the Pharmacies around the area are open after 8.30am or 9am. The Pharmacy is going to work in conjunction with the surgery as indicated in the cover letter that opening times will be changed to suite the surgery opening times, this was also not considered by the PCT.
- 3.8 The shops include a convenience store that is used by many residents around the area, when the new housing development is built, there will be more demand for these shops and a Pharmacy. A town centre such as Bilston town centre does not substitute for a local shopping parade, where a community Pharmacy would offer a range of services for the neighbourhood, close to the Medical centre. Discussions have also taken place with the Chief Executive Officer for Wolverhampton and Walsall LIFTco who is in charge of the development of the Ettingshall medical practice who stated that they would definitely consider the option of moving the Pharmacy into the Ettingshall Medical practice when the permanent building has been built. The shop on New street was initially chosen because there was an empty unit there and only the temporary build has been completed for the Ettingshall Medical practice with no timescale for the permanent build. (e-mail provided).
- 3.9 No consideration was given to the higher deprivation within the ward, or the increase in deprivation in the future who would required better access to Pharmaceutical services. Unnecessary costs would incur to those who have no transportation (especially in a highly deprived area), using buses and/or trains to get to Bilston High Street outside the neighbourhood. The PCT go on to discuss how patients in the proposed site have long established arrangements for accessing Pharmaceutical services taking no consideration in the new patients at Ettingshall medical practice and/or new people moving into the area with the future developments.
- 3.10 Six Pharmacies in Bilston town centre were mentioned by the PCT, this includes a supermarket Pharmacy used mainly by people shopping at that particular store, a Pharmacy in a Lidl store again accessed mainly by people visiting the store, a Health centre Pharmacy used mainly by people registered at that health centre and three town centre (High street) Pharmacies. There was no consideration for patients not having a community based Pharmacy within the locality, which would serve the local community.
- 3.11 There was no consideration for future housing development and increase in population with an approved outline planning in the area. Therefore there was no consideration given to the increase in service users and the future impact of not having a Pharmaceutical provider in the neighbourhood. The outline application granted 520 dwellings to be completed increasing the population by approximately 1300 people. One of the advantages the Wolverhampton PCT board considered when choosing this location for the new Medical centre was that this was close to the long term housing development mentioned in the original application. The Government has already pledged money from the 2009 budget to kickstart housing

developments around the country, 12 developments have been shortlisted in the West Midlands to use the funding to kickstart development and this includes the Ward Street development in Ettingshall by Persimmon homes. Discussions with Persimmon homes indicates that they are currently in talks with the Wolverhampton City Council over the plans and work could start in early 2010. (e-mail enclosed).

- 3.12 Plans for further new developments have also been submitted in and around the neighbourhood, this includes an outline application for a residential development at a former factory site just off Chestom road, Ettingshall as shown on the map. There is also plans for 150 new dwellings just outside the neighbourhood boundary to the north west at land between Cable street, Steelhouse lane and the Canal also shown on the map. Both applications are located in the Ward of Ettingshall indicating the future need for more services around the area.
- 3.13 No consideration was given to the new Ettingshall medical centre which will serve around 6000 patients who will have to travel long distances to a Pharmacy. The medical centre will become a source for prescriptions and Pharmaceutical queries. Patients and the medical centre staff would benefit locally from interacting with a Pharmacist. Having a Pharmacy close to the new surgery would be advantageous as it would offer Pharmaceutical advise to both surgery and patients. Services such as blood pressure monitoring, smoking cessation, methadone services, minor ailments, emergency hormonal contraception would relieve the surgery who would then concentrate on more specialist services. Opening times will benefit the new surgery and also over the counter advise and medications will again bring relief to the surgery.
- 3.14 By submitting response from Ettingshall local neighbourhood partnership who represent the local people there is evidence of shortfall of services in the proposed location. No consideration was given to the views of the local people represented by the local neighbourhood partnership who supported the opening of a Pharmacy. The PCT could not concur on the evidence available that a Pharmacy is necessary and/or desirable. The application along with supporting evidence does suggest that there is enough evidence to support inadequacy of Pharmaceutical services, therefore evidence was not properly examined.
- 3.15 The Pharmacy would be initially located in the local shopping area for the residents close to the new medical centre and would allow patients access to a wide range of services including dispensing prescriptions, healthcare advice, support for self care, and advanced and enhanced services commissioned by the PCT. Whilst some Pharmacies will offer collection and delivery there is no substitute for face to face contact especially for advanced and enhanced services. With all the evidence provided Pharmaunison Ltd believe that a new Pharmacy contract is both necessary and desirable to secure adequate Pharmaceutical services in the neighbourhood.

#### 4 Preliminary Consideration

- 4.1 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.
- 4.2 It also had before it the responses to the Authority's own statutory consultations.
- 4.3 On the basis of this information, the Committee considered that it was necessary to hold an Oral Hearing, before determining the appeal.
- 4.4 The Committee does not wish to inhibit the Oral Hearing Panel's consideration of this case, but requests the Panel particularly to look at the following:

- 4.4.1 The Panel are requested to recommend with reasons, the most appropriate neighbourhood for the proposed pharmacy.
- 4.4.2 The Committee asks the Oral Hearing Panel to recommend whether the application should be granted in order to satisfy the test in Regulation 12(1).
- 4.5 The Panel was duly appointed and sat at Wolverhampton City Primary Care Trust, Coniston House, West Entrance, Chapel Ash, Wolverhampton WV3 0EX on Friday, 8<sup>th</sup> January 2010 to hear the Appeal.
- 4.6 A list of those present is annexed at Appendix A.

## 5 Site Visit

- 5.1 Initially, members of the Panel were driven along all the boundary roads of the two neighbourhoods proposed ( by the Applicant and by the PCT ), namely Wellington Road, Wolverhampton Road and Ettingshall Road, Millfields Road and the Black Country Route. From the papers it had seemed to the Panel Members that the only matter in dispute so far as neighbourhood was concerned was whether or not Wolverhampton Street should form the eastern boundary of the neighbourhood (as proposed by the Applicant/Appellant) or whether the additional triangle of the Black Country Route, Wellington Road and the centre of Bilston itself (i.e. to the east of Wolverhampton Street) should be included in the neighbourhood as proposed by the PCT.
- 5.2 All the boundary roads referred to above were relatively major and busy roads and the Panel had no difficulty in agreeing them as appropriate boundaries.
- 5.3 So far as Wolverhampton Street was concerned they travelled up and down that road no less than four times. Housing to the west of Wolverhampton Street was almost continuous along the street frontage whereas housing to the east of that street was somewhat sparse. There was some housing at the southern end of Wolverhampton Street on the east but then the road frontage was comprised of small industrial buildings and other commercial outlets and to a great extent by Hickman Park.
- 5.4 What housing there was on the east of Wolverhampton Street was not that dissimilar to that on the western side.
- 5.5 The road was a standard two-way highway (i.e. not a dual carriageway) and had some three crossing points, two governed by traffic lights and a third crossing between those two. The road was relatively busy but not to the extent that one would consider it a barrier between the area to the west and the area to the east. In other words it was a crossable road, with care.
- 5.6 What the Panel did conclude from their site inspection however was that in their view it was unlikely that residents in the vicinity of Wolverhampton Street to its east were likely to go towards the west and Priestfield and Ettingshall for their daily needs. It was far more likely that those living to the east of Wolverhampton Street would migrate towards Bilston Town Centre.
- 5.7 The Panel were then driven to the Application Site. There was one empty shop in a row of approximately 8 shops which included a supermarket, a Chinese takeaway, an off licence, a pet shop, a hairdressing salon, a cafe and a fish and chip outlet. There was ample parking in front of the row of shops and although not busy at the time of the Panel's visit there was evidence of car parking and some pedestrians in the vicinity.
- 5.8 The poor condition of the property in the area gave the impression of a relatively deprived state. The housing was of the pre-1960s vintage (so at least 50-60 years old) and comprised in the main flats/maisonettes with some semi-detached housing.

- 5.9 There was evidence of car ownership both adjacent to houses and on street parking but certainly not a situation where there were one or two cars outside every house.
- 5.10 The Panel concluded that the area was somewhat isolated from the Parkfields area and Bilston Town Centre.
- 5.11 From the Application Site Members of the Panel walked to what appeared to be, from the case papers, the nearest pharmacy, namely the Co-operative Pharmacy at No 3 on the plan. They accessed that pharmacy via Ward Street, Millfields Road and the Black Country Route and that journey took them some 25 minutes or thereabouts ( in Snow conditions ) and was a distance of 1,824 metres measured by wheel. The route was not signed and the Panel had some difficulty in taking the correct route towards Ward Street from the application site.
- 5.12 The Panel noted the terrain initially was flat but when approaching and leaving a very narrow bridge over the canal on Ward Street there was an incline both approaching and leaving the bridge and walking down to Millfields Road. The bridge itself was capable of taking one vehicle only at a time, there was no signage as to right of way and there were no footpaths or pavements when crossing the bridge itself.
- 5.13 Taking account of the distance and the terrain members of the Panel concluded that it was not a walk which they would take on a voluntary basis unless they were relatively young or fit. Certainly it was not the sort of walk that one would take solely for the purpose of accessing a pharmacy in the Town Centre or in the Parkfields area and it seemed to members of the Panel that the residents of the neighbourhood immediately surrounding the Application Site would rely on public transport or their own motor vehicles for such a journey.
- 5.14 It should also be mentioned that Members of the Panel subsequently visited the Parkfields area and particularly Pharmacies 8 and 9 and the Medical Centre there. Although not measured by wheel it seemed to the Panel that those pharmacies were most probably equidistant from the Application Site to the Co-operative Pharmacy at No 3 on the plan. Certainly there could be very little in it as to distance.
- 5.15 After accessing the Town Centre having conducted their walk from the Application Site, Members of the Panel walked throughout the Town Centre's pedestrianised area passing Pharmacies 2-6 inclusive and the two medical practices shown there.
- 5.16 The pharmacies were clustered within the Town Centre.
- 5.17 It should be mentioned that on their walking route from the Application Site Members of the Panel passed the Metro Station the turning to which was 100 metres from the Application Site and then a further 100 metres off the main road to the Station (i.e. 200 metres in all).
- 5.18 After their Town Centre visit Members of the Panel visited the Boots Pharmacy on Wellington Road together with the three medical surgeries nearby; they travelled along Parkfield Road, Dudley Road (passing Pharmacies 8, 9, 10 and 11) but did not go out to Willenhall Road to visit Pharmacies 13 and 14.
- 5.19 In conclusion, the only matter really for consideration by the Panel was whether or not Wolverhampton Street formed an appropriate boundary as the Applicant was suggesting or whether it was the additional triangle including Bilston Town Centre which should be adopted as part of the proposed neighbourhood.
- 5.20 The Panel decided to leave matters in abeyance until they had heard the oral evidence at the Oral Hearing later in the day to consider that aspect.

- 5.21 There was evidence from the papers that there was a bus service to the Application Site and into Bilston Town Centre. At the time of their visit the Panel did not see any evidence of a bus but as it was allegedly an hourly service, perhaps that was explicable.

## 6 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.

### Wolverhampton City Primary Care Trust

- 6.1 The PCT has within the last few days received an application for a 100hour pharmacy in the Bilston area, Preliminary procedures are in progress and a determination will be made in due course.
- 6.2 The current applicant states that the PCT had clearly not decided this application under the necessary and desirable criteria. An application for preliminary consent for inclusion to the pharmaceutical list has to be processed, considered and determined in accordance with Regulation 12 (or 13 if an exempt application), 23, 24, 27, 28, 29 and the PCT confirms that it carried out its obligations accordingly.
- 6.3 With regard to the PCT's determination to re-define the neighbourhood the Appellant feels that the PCT has added an area from a separate Ward. However, even though the Appellant consistently refers to Ettingshall Ward in his defined neighbourhood he only encompasses a very small proportion of the Ward. Furthermore, the Appellant has previously stated that the Dental Practice on the Wellington Road and Stowheath House Respite Unit would benefit from having a pharmacy in close proximity. The PCT would respond to this by saying that, firstly both are outside the neighbourhood the applicant has determined and that Dental Practices have a very low prescription output and Stowheath House Respite Unit, only caters for a maximum of ten patients. Extracts from the last visit report for the home, which is available for public information, states: "the young people bring their own medication into the home when they stay. The inspector observed the medication being received into Stowheath's care on arrival to the home." It would seem from this statement that they may not be many occasions when the home would need to access pharmaceutical services.
- 6.4 The Appellant says that housing to the east of Wolverhampton Street is of a different character and was built at a different time to that of the west of Wolverhampton Street. The PCT fail to see the relevance of this statement. The proposed new housing that the applicant refers to in his appeal will also be different in character and built at a different time to existing homes.
- 6.5 Information from the 2001 Census available on the Wolverhampton City Council website indicates that the City has 85 neighbourhoods within 20 Wards. Ettingshall Ward covers an area from the City Ring Road in the North following the Bilston Road and Wellington Road to Broad Street in the West down to the Black Country Route to where it meets Birmingham New Road in the South upwards along Spring Road then across to meet the Birmingham New Road just below where it crosses the Parkfield Road in the East.
- 6.6 Evidently Wards are considerably larger than neighbourhoods. The applicant states that there will be an increase of 1300 residents with the new developments. It is noted that the applicant has only recently (18.8.09) approached Persimmon to enquire if the development is going ahead. Mr Harman responding on behalf of Persimmon Homes has stated that they are currently in talks with Wolverhampton City Council over planning matters and if everything goes well with negotiations they hope to start in early 2010. The PCT do not consider this to be a definite commitment to commence work as negotiations have not yet been finalised.

- 6.7 The other housing development that the applicant refers to in his appeal is not within the neighbourhood he intends to serve and is virtually on the periphery of the City Ring Road. It would seem unlikely that patients would travel from this proposed development all the way to the proposed site and therefore the PCT feel that this can add no value to the appeal.
- 6.8 The PCT concedes that there is an expectation that the new GP led practice at Ettingshall will register 6,000 patients over a 5 year period (1,200 per year). The centre is run by Parkfield Wolverhampton Medical Services Limited a company formed by a long established GP practice with a surgery at the nearby Parkfield Medical Centre and a branch surgery at Woodcross, Coseley. The practice will have booked appointments and a walk-in for registered patients. It will offer services such as minor surgery, sexual health and men's services. People will also be able to get advice on healthy living.
- 6.9 In their determination of an application the PCT gives consideration to their current PNA (currently being reviewed) which states that there are no known areas in Wolverhampton that are inadequately served by existing pharmacy contractors; the fabric of peoples everyday lives in a determined neighbourhood such as where they live, shop, work, transport links, accessibility to services (health or otherwise), local knowledge and from a pharmaceutical prospective if there is adequate provision and a choice of provider for patients.
- 6.10 There are excellent access routes in the general location. The metro station is approximately 100yards from the proposed site. It connects Wolverhampton with Birmingham with a large number of destinations in-between including Bilston Town Centre. There are 6 bus services operating locally — with routes on Bilston Road/Wellington Road, Wolverhampton Street, Millfields Road and Ettingshall Road.
- 6.11 The distance from the proposed site via Millfields Road into Bilston is approximately 1 mile; the distance from the proposed site via Wellington Road/Wolverhampton Street into Bilston is approximately .9 of a mile; the distance from the proposed site to the I pharmacy on Parkfield Road is approximately 1.6miles.
- 6.12 It was mentioned by the Appellant that patients from Thorn Street, Briarwood Close and Pembroke Avenue would have to travel some distance to a pharmacy and that a town centre such as Bilston town centre does not substitute for a local shopping parade where a community Pharmacy would offer a range of services for the neighbourhood close to the Medical Centre. The applicant's appeal letter states that the shop on New Street was initially chosen because there was an empty unit there and only a temporary build had been completed for the Medical Practice. The email he has submitted with his appeal indicates that he would be interested in a move to the Ettingshall Medical Centre should there be availability. Clearly a commitment to dispense from the shopping parade would be over ridden should there be, at a later date, an opportunity to relocate to premises in the Medical Centre. The applicant states in his appeal letter that Liftco have said they will definitely consider the option of moving the Pharmacy into the Medical Centre. The email from Liftco actually states that they will definitely consider the option when asked by the applicant if Liftco were planning to have a rentable area for pharmacy services.
- 6.13 As far as the PCT are aware, there are no immediate plans for a permanent build at Ettingshall. Furthermore the PCT would comment that, should accommodation become available in the future, other pharmaceutical providers in the general location may also give consideration to relocating.
- 6.14 The Appellant goes on to state that he would adjust his opening times to open from 8am which would benefit many surgeries around Bilston including the new Medical Centre. The PCT would understand from this that the Appellant is aware that patients from the neighbourhood do travel to different areas to access medical services from

other providers. It does not necessarily follow that patients will return to the proposed location to have a prescription dispensed.

- 6.15 Whilst the appellant acknowledges that some pharmacies offer collection and delivery he believes there is no substitute for face to face contact. However the PCT would comment that collection and delivery is a valuable intervention for those patients that are house-bound or have limited mobility and domiciliary visits can be made to patients.
- 6.16 The Appellant makes reference to the six pharmacies in Bilston town centre. Hours and services from these pharmacies are provided every single day of the week by different providers — Boots, Lloyds, Superdrug, Co-op, Morrisons. A full range of services are provided from these pharmacies and a comprehensive range of over the counter requisites. The PCT considers that these give patients a reasonable choice. There is nothing to suggest that should there be an increase in population in the general location that these pharmacies would be unable to meet any future demand for services.
- 6.17 The pharmacy within the building housing Lidl Supermarket is in a separate unit and does not have to be accessed by going into the Supermarket itself. The pharmacy within the Wm Morrison Supermarket building is also housed in a separate unit and patients do not have to walk around the Supermarket to access the pharmacy. Other units are also within this building — an opticians, newsagent, café, travel agent, dry cleaners, clothes shop and beauty salon.
- 6.18 The appellant says that the pharmacy within the Health Centre in Bilston is used mainly by people registered at that health centre. If this is so, and the Appellant has not indicated how he verified this, the PCT would again comment that should, at a later date, accommodation become available in the new Ettingshall Medical Centre and is secured by the appellant, then the same scenario as he has outlined for the health centre in Bilston might again prevail at Ettingshall.
- 6.19 With regard to the letter of support from the local neighbourhood group that the Appellant submitted just prior to scheduled meeting to determine the application the PCT has been quite clear in its Statement of Reason that — “In reaching a determination the FHS Functions Committee of the PCT considered all the information submitted by the applicant and parties that had made representation” The early reference in the Statement to the submission of the document was to highlight the fact that the applicant had seemingly not approached the neighbourhood group prior to submitting his application on 7 May.
- 6.20 In his appeal letter the Appellant says that no consideration was given to the higher deprivation within the Ward or the increase in deprivation in the future. The PCT acknowledge that within the Ward, which as previously explained is quite extensive, there had been identified some areas of deprivation. However, the figures are based on historic data and do not take account of any new builds, or GP surgeries etc. In order to address the situation and support regeneration suitable land has been acquired and two new GP premises have been built within the general locality — one in Ettingshall and one in Bilston Town Centre. The PCT cannot concede that deprivation will increase in the future when action has been taken to achieve a reduction by the provision of additional primary medical healthcare services. Also should Persimmon Homes be successful in their negotiations to build new private homes in the future the profile of the area would again be uplifted.
- 6.21 With regard to new patients the PCT would say that it is more than probable that patients currently registering with Ettingshall Medical Centre are already resident in the area and that the PCT cannot estimate the number of new residents that may come into the neighbourhood in the future.

- 6.22 The parade of shops that is referred to in the appeal letter are, in the opinion of the PCT, ones that the local community would not necessarily access on a daily basis. There is a hairdressers, a pet shop, two take-aways, a café and an off-licence. The small convenience store is purely that — a store that, within the confines of its size, caters for every day essential items but cannot offer an extensive choice of product.
- 6.23 In conclusion the PCT would reiterate that on the evidence that the appellant submitted and on the information available to the PCT the decision to refuse the application under the necessary or desirable criteria was made by the Members of the FHS Functions Committee as they felt that there were already adequate pharmaceutical services provided within the neighbourhood, the applicant was not proposing to provide any services in addition to those already being provided and patients did have a reasonable choice of provider of services
- 6.24 The PCT acknowledge the change in Regulations on 17 September 2009 to Necessary or Expedient.

#### **Wm Morrison Supermarkets plc**

- 6.25 Morrisons agree with the PCT's definition of the neighbourhood.
- 6.26 The applicant has stated that the PCT's definition of neighbourhood brings in the ward of Bilston East. Morrisons are not aware that neighbourhoods are defined in the NHS Pharmaceutical regulations by political ward boundaries which are subject to change by Government with no reference to pharmacy.
- 6.27 The applicant has failed to acknowledge the fact that the PCT had made several visits to the proposed site and engaged with the local population who in turn stated they did not see any benefit from a pharmacy in the proposed location because they readily accesses other areas as part of the fabric of their everyday lives.
- 6.28 Although the applicant says that he doesn't rely solely on the desirability of a pharmacy being linked to the opening of a surgery he makes great store about this in both his application and appeal.
- 6.29 The applicant is not proposing to offer any additional service to those already provided to the neighbourhood population nor beyond times already covered by existing pharmacies.
- 6.30 The applicant has failed to prove that existing pharmacies will be able to cope with the proposed minor increase in population within the PCT defined neighbourhood.
- 6.31 Morrisons believe that this application is neither necessary nor desirable to secure an adequate pharmaceutical service within the neighbourhood and respectfully request that the Litigation Authority appeal unit uphold the decision of Wolverhampton PCT and dismiss this appeal.

#### **Superdrugs Stores plc**

Have no further comments to make at this stage, but wish to be kept informed of the situation.

#### **Boots UK Ltd**

- 6.32 Boots agree with the PCT decision to reject the application and their reasoning. The PCT have provided a full statement of reasons demonstrating that they have given regard to the neighbourhood, the accessibility of the existing services and pattern of patient movement in the area, the range and adequacy of the existing services, choice, future developments and the new GP practice.

- 6.33 It is not axiomatic that the establishment of a new general practice will lead to an inadequacy in the provision of pharmaceutical services in the locality. The desire for convenience of a pharmacy in close proximity to a surgery should not be confused with the strict interpretation of desirability within the Regulations.
- 6.34 The applicant 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 for such services.
- 6.35 There are a number of pharmacies located in Bilston where Boots believe the majority residents will visit frequently to shop and access amenities such as banks, Post Office services, the library and leisure facilities. Additional pharmaceutical services are available in adjacent neighbourhoods and in the centre of Wolverhampton.
- 6.36 Pharmacies in the Bilston area provide patients with access to a range of pharmaceutical services seven days a week and until late in the evening. The applicant is not proposing to offer any services or hours of service that, if not already available, could not be commissioned from one of the existing pharmacies.
- 6.37 The applicant has also failed to provide any indication of significant difficulties encountered whilst wishing to access pharmaceutical services in the area.
- 6.38 As the PCT have stated, there are good public transport links from the Ettingshall Road area to Bilston with both bus and Metro services available (map provided). The Metro service runs every 8-10 minutes throughout the day, from early morning until midnight.
- 6.39 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.

#### **Lloyds Pharmacy Ltd**

- 6.40 Lloyds maintain their objection to this application as they contend 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.
- 6.41 The PCT thoroughly considered the accessibility and location of the existing when arriving at their decision and also considered the services that those provided.
- 6.42 The existing pharmacies in Lloyds opinion are wholly adequate to meet the needs residents and visitors and therefore Lloyds respectfully ask the FHS Appeal Unit to appeal and uphold the decision of the PCT accordingly.

#### **Dudley Local Pharmaceutical Committee**

The LPC has no comments to make about the application at this stage. The LPC should, however, be most grateful if they could be kept informed of any developments and decisions in the case.

#### **Wolverhampton Local Pharmaceutical Committee**

- 6.43 In essence, the LPC remains of the view expressed in their letter dated 10 July 2009 to the PCT that the application should be rejected as being neither necessary nor desirable.

- 6.44 The LPC would confirm the contents of that letter and ask that it be taken into consideration when the appeal is being determined. The LPC encloses a copy of the letter for ease of reference.
- 6.45 The LPC feels that the PCT has made the correct decision in this case and concurs with the reasons it has given for that decision. The LPC also agrees with the PCT's definition of the neighbourhood, as opposed to the restricted one suggested by the appellant.
- 6.46 Having considered the contents of the appeal, the LPC still feels that the appellant has failed to demonstrate convincingly that the existing pharmaceutical service provision is inadequate or that it would be insufficient in the foreseeable future. There clearly remains considerable uncertainty about the extent and timing of new housing developments as well as the rate of growth of the new GP practice in the locality.
- 6.47 In the circumstances, the LPC feels that the appeal should be rejected and the PCT's decision confirmed.

LPC's letter to the PCT dated 10 July 2009:

- 6.48 After careful consideration, it is felt that the application should be rejected as being neither necessary nor desirable from the point of view of the adequacy of pharmaceutical services.
- 6.49 It is felt that the applicant has failed to demonstrate that the existing pharmaceutical services available to the population in the long-established communities within the neighbourhood are inadequate. The LPC is not aware of any complaints from members of the public about the adequacy of existing services or the distribution of local pharmacies.
- 6.50 Whilst it is acknowledged that the impact of the recent opening of the new GP surgery needs to be kept in mind, again, in itself this does not automatically mean that existing pharmaceutical services are or might become inadequate. This is especially so given the existence of collection and delivery services and other domiciliary services for example.
- 6.51 The LPC notes the applicant's contention about the proposed new housing developments in the neighbourhood. However, there is no evidence to suggest that existing pharmaceutical services would be unable to cope with whatever demand might be generated by the occupants of these new developments. Moreover, the timing and extent of these developments appears to be very unclear and may become even less certain in the current economic climate, of course.
- 6.52 In the circumstances, the LPC urges the PCT to reject this application.

## **7 Further Comments**

### **Ettingshall Local Neighbourhood Partnership**

- 7.1 Ettingshall Local Neighbourhood Partnership, which is a wholly representative group of local residents, service providers and Elected Members of the Ettingshall Ward of Wolverhampton, would like to express its concern that Wolverhampton City NHS/PCT has refused preliminary consent for inclusion in the Wolverhampton Pharmaceutical List for proposed premises at New Street.
- 7.2 At the Local Neighbourhood Partnership (LNP) meeting last night, the following supporting evidence was discussed. The group's responses to the reasons given for the refusal, which they felt could not be substantiated are:

- 7.2.1 In terms of defined location, the nature of 'Ettingshall Village' is that it is an isolated community — being surrounded on all sides by major roads and areas of derelict industrial land. This in itself gives a feeling of social exclusion which was recently endorsed by representatives from the Home Office who visited the area.
- 7.2.2 There are approximately 800 households within the immediate area, amounting to a population nearing 2000 residents. Ettingshall is amongst the most deprived areas of the City of Wolverhampton.
- 7.2.3 The nearest other pharmacy's are in the region of 1.5 — 2 km from the proposed site. One of these is close to a bus route, whilst the other certainly is not. Able-bodied residents can reach these premises, but access is certainly an issue for elderly residents, mums with pushchairs, those with disabilities and those without their own transport. 17.7% of our residents are aged 60+, 23.7% are aged under 16 years and lone parent families amount to 12% of the population. All these statistics are above the City averages.
- 7.2.4 If close proximity to other pharmacies is given as a reason to deny this application, then why was the pharmacy at Phoenix Health Centre, Parkfield Road given permission to open when there is an additional long-standing pharmacy on Dudley Road less than 100 metres away? The LNP feel this permission was granted as the Phoenix was a PCT built provision.
- 7.2.5 Plans are afoot to build between 500 and 600 new homes in close proximity to the New Street site (Persimmon Homes). Whilst this scheme has been delayed somewhat by the economic recession, there is renewed activity on site and planning applications are being resubmitted to Wolverhampton Council, therefore, indications are that this residential development will be back on course soon. This in itself justifies the needs for additional services in the area.
- 7.2.6 A new medical practice (Ettingshall Medical Centre) was built on Herbert Street, Ettingshall (some 0.5 kilometres away from New Street) and opened in July this year. Local residents have fought hard for many years to establish this facility. Whilst 390 residents have registered with the practice to date, there is a feeling that people are being put off from signing-up as they still have to obtain their medication from elsewhere, so they may as well go to the 'elsewhere' to start with! The LNP feel it is very short-sighted of the PCT to refuse this application in an area where they themselves have worked so hard to improve facilities. This pharmacy would be the icing on the cake!
- 7.2.7 The New Street area is the centre of Ettingshall Village. The Post Office was recently closed and there has been a decline in the number of shops operating in the vicinity. This situation has improved in the last few months, with all but the one shop in the parade now being occupied. The addition of a much needed pharmacy in the area would further enhance the local facilities and increase the usage of the shopping area in general.
- 7.3 Ettingshall Local Neighbourhood Partnership respectfully requests that this submission for a pharmacy could be reconsidered by the NHSLA and consent granted as soon as possible for this much needed community resource.

## 8 The Oral Hearing

- 8.1 The Chair made appropriate introductions of the Panel (all of whom confirmed they had no interest in this matter) and those present and whom they were representing.

- 8.2 He confirmed that this would be a re-hearing of Mr Ghateaura's original application on behalf of Pharmaunison Limited and confirmed that the Panel would be relying on the following paperwork that had been received by all parties:-
- a) The bundle of case papers amounting to 112 pages
  - b) The Oral Minute reference SHA/15347
  - c) Letter from Ettingshall Medical Centre dated 30<sup>th</sup> December 2009
- 8.3 The parties confirmed that there was no further evidence to submit save Ms Corbett had, before the hearing, indicated that she had a petition signed by 100 people or thereabouts supporting Mr Ghateaura's application. The Chair decided that that should not be admitted at such late notice.
- 8.4 The Chair then indicated that the Panel had conducted a thorough site inspection on the morning of the hearing having travelled through both the Applicant's proposed neighbourhood and that suggested by the PCT in its decision letter. They had travelled the boundaries of both neighbourhoods and into the neighbourhoods by car. In addition they had walked from the Application Site to what had appeared to be the nearest pharmacy namely Pharmacy 3 (the Co-operative Pharmacy in High Street, Bilston) in Bilston Town Centre.
- 8.5 From the Application Site they walked due south towards Millfields Road and then along Millfields Road into Bilston. That was a journey of some 1,824 metres measured by wheel. It took the Panel Members approximately 25 min to walk in the snowy conditions. The only feature of the walk which the Panel commented on was walking over a very narrow bridge with an incline to it and an incline away from it the same being wide enough for one vehicle only. The bridge itself had no footpaths or pavements on either side. This was a bridge over the canal on Ward Street. Apart from the inclines referred to the walk was on relatively flat terrain with footpaths and crossing points.
- 8.6 Finally, the Chair confirmed that the Panel Members had sight of prescription numbers for the various pharmacies recorded on the plan at page 51 of the case papers together with Patient List sizes of the various doctors' practices also recorded thereon.
- 8.7 **Mr Ghateaura on behalf of the Applicant/Appellant, Pharmaunison Limited then presented his case:-**
- 8.7.1 **Neighbourhood**
    - 8.7.1.1 Mr Ghateaura referred to the difference in neighbourhood between that suggested by him and by the PCT. He confirmed that the reason he had chosen as his eastern barrier Wolverhampton Street was because it divided Bilston Town Centre from the Ettingshall Community. In his opinion both sides of Wolverhampton Street were different in character, on the western side of it there was continuous housing along almost the whole of the street whereas on the eastern side there was the open space of the park, educational and industrial buildings, and only a small amount of housing at the southern end.
    - 8.7.1.2 He referred to page 46 of the case papers where the PCT had suggested that he had been restricted in his definition of neighbourhood and that his application included limited residential accommodation. Further, on page 28 of the case papers Morrisons suggested in their letter opposing the application that the majority of the population resided to the east of Wolverhampton Street and to the south of Millfields Road.

- 8.7.1.3 Mr Ghateaura stated that he had analysed data on the internet which showed that the number of properties in the neighbourhood to the west of Wolverhampton Street was approximately 1,506, 1,417 of those being residential properties. This did not include properties from Wellington Road and Bilston Road.
- 8.7.1.4 He referred to the number of potential new residential properties in the Ward Street Development by Persimmon Homes which was going to be some 520 units.
- 8.7.1.5 He stated that the number of properties to the east of Wolverhampton Street (in other words towards Bilston Centre) being part of the neighbourhood suggested by the PCT were approximately 638, with 523 of those being residential.
- 8.7.1.6 Finally, there were properties to the south of Millfields Road some 248 residential properties.
- 8.7.1.7 Dealing with the additional triangular area added to his neighbourhood by the PCT as their suggested neighbourhood, he maintained that added residential properties amounting to approximately a third of the current properties to the west of Wolverhampton Street. Once the additional development has taken place there, those properties to the east would form approximately a quarter of the residential population of the PCT neighbourhood. In his view therefore by adding the area to the east of Wolverhampton Street to form part of the neighbourhood as the PCT had done did not add significant residential properties to the neighbourhood.
- 8.7.1.8 Mr Ghateaura pointed out that the Department of Health Guide to control of entry for PCTs suggested that neighbourhoods did not have to comprise a solely residential population.
- 8.7.1.9 On page 46 of the case papers the PCT had stated that there was a significant proportion of derelict land and factory units within the neighbourhood. Mr Ghateaura suggested that these units provided places of work for residents around and both inside and outside the neighbourhood, and that such land would eventually be filled with housing of one sort or another. In his view the PCT failed to recognise a portion of the area to the east of Wolverhampton Street containing much commercial property and the open space filled by Hickman Park. In his view the PCT had therefore not provided valid reasons for extending the neighbourhood to the east of Wolverhampton Street.
- 8.7.1.10 Finally, turning to page 99 of the case papers the PCT had suggested that should accommodation become available then other pharmaceutical contractors could consider relocating into Mr Ghateaura's proposed neighbourhood. In his view however the PCT had not taken into account the distance and barriers for any minor relocation of one of the existing pharmacies to the Ettingshall Medical Centre, and it would be difficult, if not impossible, to approve any such move as a minor relocation.

## 8.7.2 Access

- 8.7.2.1 Mr Ghateaura referred to page 29 of the case papers and Boots' letter stating that the application had not provided any indication of difficulties in access to existing services. However in his view letters from the Ettingshall Local Neighbourhood Partnership who work with

local people, together with the Ettingshall Medical Practice's letter of support indicate that there were difficulties in accessing pharmacies for local residents.

- 8.7.2.2 In his submission barriers to access included distance, bridges, traffic flow, inclined walks and broken footpaths.
- 8.7.2.3 According to the data that he had researched, the quickest route when walking from the Application Site showed all pharmacies were in excess of 1.6 km away. Whilst the PCT felt that it was likely that patients of existing medical practices had long established arrangements for accessing pharmaceutical services in their area, it seemed to him that the PCT had not taken into consideration the new people moving into the area and occupying the new developments which would be built in the near future.
- 8.7.2.4 Again he referred to the Department of Health Guide to Primary Care Trusts as to control of entry where it stated that an important aspect to be considered was the time and distance taken to travel to a health centre and/or pharmacy and back home again, in other words the round trip had to be taken into account. In his view the shortest round trip at present was likely to be a minimum of 3 km taking anything from 40-50 min to walk at a reasonable pace.
- 8.7.2.5 The PCT had stated on page 47 of the case papers that there was a 100 hour pharmacy in Parkfields but Mr Ghateaura pointed out that Ettingshall Medical Practice was 2.46 km on any accessible access route from that 100 hour pharmacy and that would involve a 5 km round trip which really could not be acceptable as providing reasonable access to pharmaceutical services.
- 8.7.2.6 The PCT Panel has obviously discussed the bus services and metro services to and from Bilston Town Centre and hence access to existing pharmacies there. However in his submission the Panel failed to recognise that only buses 574 and 575 actually came into his neighbourhood area and those services ran hourly. All other bus services had to be caught by crossing Wellington Road or Bilston Road and with return journeys people would have to cross the busy Wolverhampton Street or Millfields Road. In addition apart from patients of pensionable age the Panel did not appear to have taken into consideration the cost of travel, by bus or metro from such a deprived area.
- 8.7.2.7 The PCT seemed to suggest that the row of shops where the Application Site is is the sole shopping area of the neighbourhood. They failed to recognise other shopping outlets such as a large food store, a post office, a cafe, a hairdressers, a furniture store, a petrol station with a Co-operative Food Store all on the Wellington Road. There is a beauty salon and convenience store on Hall Park Street and a large Millfields Store on Coronation Road which included a newsagents, off licence and grocery. It was therefore not true to say that there were very limited shopping outlets in the area.
- 8.7.2.8 The PCT suggested at page 99 of the case papers that patients had to travel to other areas to access medical services and that they would therefore access pharmacies in those areas. Mr Ghateaura said his application was to prevent patients from his neighbourhood having to travel into Bilston or other areas to access their pharmaceutical services. In addition his pharmacy would provide a

collection and delivery service and would allow opening until 8 pm to coincide with any surgery opening times.

8.7.2.9 The PCT made mention at page 91 of the case papers to a new 100 hour pharmacy application in Bilston Town Centre. As he understood it the chosen location was at 58 Church Street, Bilston which was near the existing Lloyds Pharmacy. Nearby are Boots and Superdrug Pharmacies located a short walk away and further down the road on the High Street is the Co-operative Pharmacy located inside the Lidl Store. In his view therefore the proposed 100 hour pharmacy in the Town Centre would not improve access to pharmaceutical services for residents of his proposed neighbourhood.

8.7.2.10 Having accessed Wolverhampton PCT's website it was evident that the new Ettingshall Medical Centre was one of four that had been put in place to improve access to medical services for local people. In his view Mr Ghateaura felt that there were a number of GPs practices who were closer to the Ettingshall Medical Centre than to the nearest pharmacy, and therefore a pharmacy where he was suggesting could only improve access to pharmaceutical services not only for those living in Priestfield but a far wider area. In his submission the Ettingshall Medical Centre location was chosen on the basis of a number of criteria namely the number of people over 75, the number of people under age 14, the number of people from ethnic minorities and taking account of known housing developments, social and economic deprivation, health inequalities etc. In addition they must have taken account of patient feedback on access to existing medical services, high use of A & E services, out of hours services and the distance of the walk to the Town Centre. In other words all these matters were taken into account by the PCT when deciding that the Ettingshall Medical Practice should be opened and all such similar factors should apply to granting the application for a new pharmacy in the neighbourhood as well.

### 8.7.3 Inadequacy

8.7.3.1 On page 47 of the case papers the PCT suggests that they feel that in the current climate there is no evidence to suggest that building will take place on the Ward Street Development. Mr Ghateaura felt that the Panel had failed to recognise that a planning application for reserved matters for the erection of 62 dwellings had already been put to the City Council for the Phase 1 of the Ward Street Development by Persimmon Homes. Persimmon had confirmed that they were proceeding with their building albeit that the first phase of housing would be relatively small but they had the whole site and there was no doubt they were going to cover it with residential units.

8.7.3.2 The PCT suggested that there was no evidence to show that existing pharmacies could not meet any additional demand for pharmaceutical services from any increase in population. Mr Ghateaura felt that the growth of the area surrounding Bilston will increase demand in that area and put pressure on the Bilston Pharmacies particularly with the development of the Bilston Urban Village which is a project of mixed use development with 1,300 dwellings to the immediate south of the High Street being proposed. That would increase the Bilston population by at least 3,000 without taking any account of the Ward Street Development. He therefore felt that the Bilston Pharmacies would have their time taken up in

providing for that additional population without having to provide for any developments in the Ettingshall area.

8.7.3.3 The PCT had in his view been incorrect in stating that the dental practice referred on page 98 of the case papers was outside the proposed neighbourhood whereas he felt that it was actually within the neighbourhood on the Ettingshall Village side of Wellington Road. In addition the PCT had failed to recognise that Grove Medical Centre located on Steelhouse Lane was a surgery within the 2 mile radius and had not been shown on page 50 and 51 of the case papers.

#### 8.7.4 **Necessary and Desirable**

8.7.4.1 Finally, Mr Ghateaura felt that having had discussions with the Ettingshall Medical Practice and having agreed to work closely with them and to mirror their opening times. He was in a position to provide patients with access to local pharmaceutical services relieving the medical practice from unnecessary appointments for illnesses that could be treated within a pharmacy. He was of the view that his pharmacy would eventually provide services from 8 am to 8 pm subject to approval from the PCT. These additional opening hours would be of great help to local people particularly when other pharmacies within the 2 mile radius were closed.

8.7.4.2 He suggested that a collection and delivery service was an important one for people with limited mobility but that service was of course not an essential service and could be withdrawn at any time by any of the pharmacies.

8.7.4.3 To conclude, he stated that this was one of the most deprived wards in the area and that this was the reason why the Ettingshall Medical Centre had been located where it is. The general health of the population in the neighbourhood as not being good was almost 5 per cent above the England average, people with limiting long term illnesses was 8.5 per cent higher than the England average, people of working age with limiting long term illness was 8.3 per cent higher than the England average and people providing unpaid care for 20 to 50 hours a week was almost 14 per cent higher than the England average.

8.7.4.4 In other words this was a highly deprived area which required local pharmaceutical services.

8.7.4.5 In his submission the granting of this application was both necessary and desirable to secure adequate provision of pharmaceutical services in the neighbourhood.

8.7.4.6 After preliminary questions were commenced by Ms Watson on behalf of Boots, the Chair decided that it would most probably be easier and more satisfactory if Mr Ghateaura's two witnesses gave evidence at this stage and then questions could be put to Mr Ghateaura and his witnesses thereafter.

#### 8.7.5 **Ms Lisa Corbett then gave evidence:-**

8.7.5.1 She confirmed she was the Neighbourhood Manager of the Ettingshall Ward of Wolverhampton City Council.

8.7.5.2 She confirmed that Wolverhampton was divided into 15 neighbourhoods. The neighbourhood proposed by Mr Ghateaura was approximately two thirds of the Ettingshall Ward.

8.7.5.3 So far as the Ward Street Development by Persimmon Homes is concerned Ms Corbett said she was aware that the Council was expecting a revised planning application from Persimmon Homes that day and that Phase 1 of the application would be in respect of 52 properties. On the basis that outline permission has already been granted it was anticipated that ground works would start within 2 to 3 months with completion of the properties within 18 to 24 months.

8.7.5.4 Persimmon's proposals were that all 502 properties for which permission had been granted would be completed by 2015, namely within the next 5 years.

8.7.5.5 She confirmed that she was aware of the public's concerns that there was no pharmacy within the neighbourhood.

8.7.5.6 She confirmed that she had worked in the area since 2002 and there were two main health concerns of the local residents in Ettingshall namely:-

- a) Lack of a GP practice
- b) Lack of a pharmacy

8.7.5.7 The PCT had now resolved the first deficiency by placing the Ettingshall Medical Practice where it is and it was hoped that Mr Ghateaura's application for a pharmacy would also be granted.

**8.7.6 Councillor Sandra Samuels then gave evidence on behalf of the Applicant:-**

8.7.6.1 She confirmed that she had worked at Wolverhampton City Council since 2004 but since March 2009 had been the Councillor for Ettingshall.

8.7.6.2 She confirmed that she endorsed everything that Ms Corbett had said to the hearing.

8.7.6.3 She too felt that the area of Mr Ghateaura's application was a deprived neighbourhood with many elderly people living there. There was a high percentage of people without any car at all and to access pharmaceutical services they had to rely on public transport either into Bilston Town Centre or to the Parkfields area to the south of the neighbourhood. Which ever way, it was a considerable distance for any of the residents in this deprived area to access pharmaceutical services.

**8.7.7 In answer to questions from those present:-**

8.7.7.1 It was suggested that the current population of the neighbourhood could only be increased by approximately 1,500 when the Persimmon Development had been completed. As far as Mr Ghateaura was aware the Persimmon Development would relate to both terraced and semi-detached houses and it was thought that a large percentage of the residential units would form social housing.

- 8.7.7.2 There was agreement that there was a concessionary travel scheme whereby there was a free bus service and metro travel between 9.30 am and 3 pm for those able to take advantage of such offers.
- 8.7.7.3 It was agreed that the new housing was likely to have a positive effect on the deprivation rate of the neighbourhood, in other words that the neighbourhood would become less deprived once the Persimmon Homes Development was completed.
- 8.7.7.4 It was agreed that the Parkfield 100 Pharmacy was open from 7 am to 11 pm.
- 8.7.7.5 It was suggested to Mr Ghateaura that the Application Site was some 500 metres from the Ettingshall Medical Centre and therefore anyone attending the medical practice would have a 1,000 metre return trip if they had to go to his proposed pharmacy and then back past the surgery to return home (if that was the case). Mr Ghateaura stated that the eventual intention was that provided the Medical Centre stayed and/or moved to permanent premises then it was hoped those permanent premises would be closer to the proposed pharmacy and perhaps eventually the medical and pharmaceutical services would be under one roof. However he still maintained that even 500 metres was better than having to walk well over a kilometre to the nearest pharmacy.
- 8.7.7.6 He confirmed that it was his intention to provide a free delivery service. He was aware that existing pharmacies provided such services.
- 8.7.7.7 Ms Corbett confirmed that the neighbourhood was approximately two thirds of the Ettingshall Ward the boundary of which is Ward Street.
- 8.7.7.8 It was suggested by Mr Evans on behalf of Morrisons that the housing on Wolverhampton Street was similar on both sides. Mr Ghateaura accepted that it was similar but nevertheless there was continuous housing on the west side and very little housing indeed on the east side but otherwise he would accept there were similarities. Indeed Mr Evans pointed out that from his research into neighbourhood statistics it was evident that there were identical levels of housing deprivation etc. on both sides of Wolverhampton Street.
- 8.7.7.9 The Applicant was asked to agree that there was an easy journey to Bilston Centre by bus and a short walk but Mr Ghateaura replied that this was only an hourly bus service as he had already indicated.
- 8.7.7.10 In answer to further questions Ms Corbett stated that residents had undertaken a number of trialled routes to get into the Town Centre which constituted a 1 hour 10 minute return journey for walking and bus together a 40 minute return journey if going by Metro, and a 55 minute return journey for walking only. That was applicable to journeys to both Bilston Town Centre and the Parkfield area.
- 8.7.7.11 It was suggested that those journeys showed that access was therefore reasonable and such journeys were not insurmountable. Ms Corbett did not agree stating that it obviously depended whether the resident was fit and healthy, young or old, or a mother with children .

8.7.7.12 It was suggested to Mr Ghateaura that he had made his eastern boundary of the neighbourhood as Wolverhampton Street on the basis that it was a very busy street. He was asked what he considered to be a busy road. He replied that it was a street in this case where it was necessary to have at least two sets of traffic lights along it for the purposes of pedestrian crossing, there was also another crossing. It was suggested to him that the Road Safety Foundation website indicated that this was a low level risk road to cross.

8.7.7.13 It was put to him by Mr Evans that the Morrisons Store was open from 8.30 am to 8 pm Monday to Saturday and 10 am to 4 pm on Sundays and that these opening hours were far in excess of what Mr Ghateaura could possibly offer at his proposed pharmacy. Mr Ghateaura responded by agreeing that, but stating that of course residents from his neighbourhood still had to obtain access to the Town Centre to enable them to benefit from Morrisons' opening times.

8.7.7.14 It was suggested to him that 44 per cent of Morrisons' prescriptions came from the Ettingshall area. Mr Ghateaura could not comment on that.

8.7.7.15 Ms Corbett indicated that in her view residents were very happy to have their surgery at the Ettingshall Medical Centre and she was therefore asked as to why there were only 700 patients or thereabouts registered to date. She pointed out that the surgery had only been open for some 6 months or so and the idea was that there would eventually be 6,000 patients by the end of 5 years.

8.7.7.16 It was further suggested that residents in the south east corner of the Applicant's neighbourhood were more likely to migrate towards Bilston to have their pharmaceutical and other services.

#### **8.7.8 In answer to questions from members of the Panel-**

8.7.8.1 Mr Ghateaura said that he had discussed his application with the doctors at the Medical Centre. Their letter of 30<sup>th</sup> December showed quite definite support for the application. He felt that with the Ward Street Development and as the patient numbers at the Ettingshall Medical Centre increased so there would be a greater need for pharmaceutical services in the area.

8.7.8.2 He was asked as to whether or not the factory workers in the neighbourhood travelled in each day or came from the locality and he felt that most would be local people.

8.7.8.3 Mr Ghateaura was asked about his proposal included within his application to provide language access services and patient advocacy. He confirmed that this was because there was a considerable black and Asian population within the neighbourhood many of whom required assistance in translation and this is what he intended to provide.

8.7.9 That concluded the Applicant's case

#### **8.8 Ms Watson then presented the case on behalf of Boots:-**

Despite the Applicant's contention to the contrary Ms Watson felt that the PCT had provided a very detailed response to the application and had given detailed reasoning for the decision that they reached.

#### 8.8.1 **Neighbourhood**

She agreed the neighbourhood proposed by the PCT. In her view it was an established neighbourhood using clearly defined geographical features such as main roads in the area.

#### 8.8.2 **Adequacy**

8.8.2.1 The PCT have provided a full and detailed statement of reasons and a full response to points raised in the Appeal. In her view their deliberations covered all matters that the Applicant had referred to within his original application.

8.8.2.2 She also felt that the PCT had given consideration to their Pharmaceutical Needs Assessment (PNA) in determining the application and she referred particularly to page 99 of the case papers where they state in a letter to the NHS Litigation Authority that "there are no known areas in Wolverhampton that are inadequately served by existing pharmacy contractors".

8.8.2.3 In Ms Watson's view existing pharmacies provide access to services 7 days a week and until late in the evenings.

8.8.2.4 Again the PCT have confirmed in the case papers (page 41) that existing pharmacies were providing essential services and a full range of advanced and enhanced services.

8.8.2.5 In addition to the existing pharmacies the PCT has recently circulated receipt of an application for a 100 hour pharmacy at 52 Church Street, Bilston which, if successful, would further enhance the already adequate pharmaceutical services in the area.

The core hours of this application extend from 7 am until 11 pm and with core hours also on Sunday meant that the pharmaceutical services on offer to the neighbourhood are extensive.

8.8.2.6 So far as Boots themselves were concerned she confirmed that they provided the following:-

8.8.2.6.1 At their Prouds Lane Pharmacy, at the Health Centre, they provided minor ailments, smoking cessation (albeit that is limited by lack of a consultation room) and a collection and delivery service is available. In addition they provide services to the Health Centre patients and to some "walk ins" and dosette boxes for patients of the Dover Street practice. They did dispense for patients in the Ettingshall area and undertake some 10 deliveries to Ettingshall on a daily basis.

8.8.2.6.2 At their Church Street, Bilston, Pharmacy they undertake medicine use reviews, minor ailments, smoking cessation, needle exchange, supervised administration, compliance aids and free collection and delivery services. These services are available to all.

8.8.2.6.3 She confirmed that their Bilston Pharmacy had already met with the Etingshall Medical Practice at the new Health Centre to discuss the services they offered and how they could work with the Medical Practice. Initial feedback suggests that the practice were extremely happy that they had visited, and that whilst at this stage information suggests a small patient list size at present, their Church Street Pharmacy does receive a number of prescriptions from that new Health Centre.

8.8.2.6.4 She wanted to point out that emergency hormonal contraception was provided by both Lloyds and the Co-op pharmacies in Bilston Town Centre.

8.8.2.6.5 She stated that Boots' Bilston Pharmacy was located in close proximity to the Metro Station which many local people used. In addition they are close to the Bus Depot and there was of course free parking available at the Health Centre and in various car parks and on streets in Bilston Town Centre.

8.8.2.6.6 In other words, in her view the area was well served by public transport to enable residents of the neighbourhood to obtain access to pharmaceutical services.

8.8.2.6.7 She stated that the Metro service ran between Wolverhampton and Birmingham, with stops at Bilston Central, the Crescent and Priestfield which was only a short distance from the proposed Application Site and the new Medical Centre. The journey between Bilston Central and the Priestfield stop takes a mere 2 minutes with services running every 8 minutes throughout the day or at least every 15 minutes in less busy times of the day.

8.8.2.6.8 In addition the 575 bus services ran through the immediate area of the proposed location to Bilston Town Centre with an hourly service but there were several additional services running along the roads that form the neighbourhood boundaries i.e. Millfields Road and Wellington Road.

8.8.2.6.9 The proposed new residential developments within the neighbourhood were in her view unlikely to bring a significant new population into the area, certainly not to the extent that any increase in population could not be capably managed by the existing pharmacies as to the pharmaceutical needs that would be required.

8.8.2.6.10 In summary therefore Boots submitted:-

- i) That the Applicant is not proposing to offer any services or hours of service that are not already available or could not be commissioned by the PCT from existing pharmacies.

- ii) The area is an established one with many existing residents in the neighbourhood being registered with existing medical practices and they will therefore already be accessing the existing pharmaceutical services.
- iii) Many Ettingshall residents will leave the area on a daily basis to shop and access amenities not provided in the limited stores on New Street.
- iv) The area is well served by public transport and there is free car parking available for those accessing services by car. Free collection and delivery services are available for those requiring them.

8.8.2.7 In the circumstance, Boots respectfully urge the Panel to uphold the decision of the PCT who have after several site visits given full consideration to the needs of patients in the area.

#### 8.8.2.8 In answer to questions:-

8.8.2.8.1 It was suggested to Ms Watson that when considering the residents on both sides of Wolverhampton Street that those residents are far more likely to go into Bilston for their existing pharmaceutical services. Ms Watson did not disagree with that. She confirmed that the Boots Pharmacy at Prouds Lane (No 1 on the plan) was on the periphery of the PCT neighbourhood but not actually within it. Nevertheless some residents of Ettingshall use that pharmacy. Mr Ghateaura suggested that that was because they had no choice but to use that pharmacy unless they went into the Town Centre.

8.8.2.8.2 When asked how Boots were promoting their services to his proposed neighbourhood and the new Medical Centre Ms Watson confirmed that they had visited the new practice, she assumed that they would have left them with a number of their own (Boots) Practice Leaflets so that patients could know of the pharmacy in Prouds Lane. She pointed out that there had been no mass migration of patients to the new surgery which could indicate that patients of other medical practices were happy to stay where they were and presumably to access pharmaceutical services elsewhere.

#### 8.9 Mr Evans then presented the case on behalf of Morrisons:-

##### 8.9.1 Neighbourhood

8.9.1.1 He felt that the neighbourhood proposed by the Applicant was somewhat contrived particularly as to the eastern boundary of Wolverhampton Street.

8.9.1.2 In his view the Applicant was confusing convenience with desirability.

8.9.1.3 He accepted that there could be a number of new homes built within the neighbourhood but no more than 520 or thereabouts and even when all of them were built that would provide an increased

population of some 1,250 new residents. It was unthinkable that the existing pharmacies could not cope with that relatively small rise in population.

8.9.1.4 In other words he agreed the PCT's definition of neighbourhood. Wards and their boundaries were not necessarily neighbourhood boundaries. The Wards themselves can change in area as evidenced in this area and so it was inappropriate to use a Ward boundary as a boundary of a neighbourhood in respect of a pharmaceutical application.

8.9.1.5 In his submission residents of Ettingshall and certainly residents to the east of Wolverhampton Street would migrate to Bilston Town Centre for provision of their pharmaceutical services. That did not mean to say that residents to the east of Wolverhampton Street were not in the same neighbourhood as residents to the west of it.

8.9.1.6 In his view the new Ettingshall Medical Centre was a satellite surgery. The demand for medical services in the area was obviously low because there had been a low number of new patients registered since July last when the surgery opened.

8.9.1.7 He suggested that the Applicant's proposed pharmaceutical services were no different from those already provided or offered by existing pharmacies.

8.9.1.8 He referred particularly to paragraph 6 on page 112 of the case papers which stated that "whilst 390 residents have registered with the practice to date, there is a feeling that people are being put off from signing up as they still have to obtain their medication from elsewhere, so they may as well go to the "elsewhere" to start with". Mr Evans agreed and submitted that residents of the neighbourhood would be registered with a medical practice most probably for many years and it would naturally follow that they would go to a pharmacy in Bilston Town Centre or near to their medical practice. The residents of the whole neighbourhood would in the main migrate towards Bilston Town Centre.

8.9.1.9 He could not accept that Wolverhampton Street was a barrier or boundary to the neighbourhood as Mr Ghateaura was suggesting. Wolverhampton Street had a number of crossings, the deprivation level on each side of the street was exactly similar according to the statistics. It was a two lane carriageway (not a dual carriageway) and, put simply, in his view did not form a boundary.

#### **8.9.2 In answer to questions from Mr Ghateaura:-**

8.9.2.1 He accepted that Morrisons provided pharmaceutical services to his proposed neighbourhood, from a neighbouring neighbourhood. In other words Morrisons was not in either the PCT or Mr Ghateaura's neighbourhood. It was suggested to him that Morrisons provided services to residents of the whole of Wolverhampton rather than just Bilston or Ettingshall areas. Mr Evans confirmed that Morrisons Stores did indeed provide services to the residents of Wolverhampton as a whole.

8.9.2.2 He confirmed that there were no care home services provided by his company's pharmacy.

8.9.2.3 It was suggested to him that he was at the hearing to promote Morrisons. He completely denied that and stated that his brief was to make sure the Regulations were adhered to when Mr Ghateaura's pharmaceutical application was considered.

**8.10 Mr Wedgbury then presented the case on behalf of Wolverhampton City Local Pharmaceutical Committee (the LPC):-**

8.10.1 Firstly, he confirmed the contents of the LPC's two letters which were contained within the case papers at pages 31, 32 (from Dudley PLC) and 105-108 inclusive.

8.10.2 Fundamentally, the LPC agreed that the PCT had made a correct decision after very careful consideration of Mr Ghateaura's application.

8.10.3 He confirmed that his Committee agreed the PCT's definition of neighbourhood in this case.

8.10.4 He endorsed the comments of those representing both Boots and Morrisons at today's hearing.

8.10.5 He commented that with regard to the Ettingshall Medical Practice letter of 30<sup>th</sup> December 2009, it was written when perhaps the doctors had only heard the Applicant's side of the story. He felt it was a pity a representative from the Medical Practice was not here to answer questions.

**8.11 Mrs Gill Shelley then presented the case on behalf of Wolverhampton City PCT:-**

8.11.1 She stated that the PCT had little to add to what she considered to be a very detailed response to the application which was set out in the case papers. She believed the PCT had given a full statement of reasons in coming to its decision to refuse the application.

8.11.2 She felt that from the evidence given at the hearing today some information that had been presented was materially different from that contained within the original application and the case papers. For example the proposed opening times.

8.11.3 So far as the Ettingshall Medical Practice was concerned she confirmed that the PCT had been asked by the Department of Health to open no less than four medical centres in areas which they considered there was a gap or lack of appropriate medical services. One of the areas which the Wolverhampton PCT had chosen was Ettingshall. She confirmed that the practice had a 5 year contract with the aim of having 6,000 patients registered at the practice within 5 years. The practice opened in July 2009 and to date had in the region of some 640 patients.

8.11.4 It was intended that the practice should break even within 3 years and the break even point would be considered on a financial basis, but she would suggest that the practice should have somewhere between 3,500 and 4,000 patients by that time.

8.11.5 Mrs Shelley confirmed that the building in which the practice was currently housed was a temporary building and as far as she was aware there were no immediate plans for it to move to a permanent building.

8.11.6 It did seem to her that the Applicant had a somewhat limited knowledge as to where patients currently accessed their medical services.

- 8.11.7 She confirmed the Grove Medical Practice ( which was not shown on the plan at page 51 of the case papers or referred to amongst the Medical Practices on page 50 of the case papers ) was within 2 km of the Application Site but was not within either of the neighbourhoods.
- 8.11.8 She pointed out that the a GP practice could not influence or direct patients to a specific pharmacy and that it was up to each patient to choose where he or she obtained their pharmaceutical services.
- 8.11.9 She confirmed that the elderly were served by a collection and delivery service by other pharmacies in the area.
- 8.11.10 **In answer to questions from those present:-**
- 8.11.10.1 She confirmed that the break even point in year 3 of the Ettingshall Medical Practice would be financially driven. She confirmed that it had no practice boundary and also that it had started with no patients at all when it opened in July 2009.
- 8.11.10.2 She confirmed that the opening of the practice was not with the benefit of Lift money but was a Government initiative to access medical services more easily and as already indicated there were four such practices opened by Wolverhampton PCT.
- 8.11.10.3 She confirmed that Ettingshall Medical Practice was a separate legal entity from Parkfield Medical Practice (Practice D on the plan at page 51 of the case papers). However the doctors practising at Ettingshall were partners in the Parkfield Medical Centre, but Parkfield Medical Centre had additional doctors who may or may not also be partners of that practice.
- 8.11.10.4 She confirmed that the Ettingshall Medical Practice was open all day although whether there was a doctor there all day she did not know.
- 8.11.10.5 She confirmed that the last PNA was prepared in 2006 and the new PNA was being considered at this time. The 2006 PNA did not highlight a need for any additional pharmaceutical services in the area.
- 8.12 That concluded the oral evidence and the Chair offered each party the opportunity of making any closing address to the Panel.
- 8.12.1 **Mr Wedgbury on behalf of the Wolverhampton City LPC** confirmed he had nothing further to add.
- 8.12.2 **Mrs Shelley on behalf of the PCT** confirmed that she had nothing further to add save to state that in her view the PCT had given full reasons for rejecting the original application.
- 8.12.3 **Mr Evans on behalf of Morrisons** confirmed that they supported the PCT's definition of neighbourhood particularly to the effect that Wolverhampton Street was not a boundary as suggested by the Applicant.
- 8.12.4 He reiterated that in his view the Applicant had confused convenience with desirability. In his submission there was no reason why any future additional demand for pharmaceutical services could not be met by the existing pharmacies.

- 8.12.5 In his view there was a natural migration by those living within the neighbourhood in an easterly direction, namely towards Bilston Town Centre.
- 8.12.6 He did not feel that medical demands in an area equated to pharmaceutical demands.
- 8.12.7 He submitted that the application should be refused in that there was adequate provision of pharmaceutical services already in existence.
- 8.12.8 **Ms Watson on behalf of Boots** simply pointed out that the Applicant was suggesting a change of opening hours to meet with those of the Ettingshall Medical Practice but in her submission the Panel has to take account of the proposed opening hours referred to in the original application.
- 8.12.9 **Mr Ghateaura the Applicant/Appellant on behalf of Pharmaunison Limited** stated that in his submission the neighbourhood in this case should be defined by local residents. That being the case those living to the east of Wolverhampton Street were not in the same neighbourhood as those living in the Priestfield and Ettingshall areas. Millfields Road and Ettingshall Village were separate and distinct from Bilston Town Centre hence his submission that Wolverhampton Street should indeed be the eastern boundary of the neighbourhood.
- 8.12.10 He felt that there were access problems so far as pharmaceutical services were concerned and these have been highlighted by him in his evidence.
- 8.12.11 To conclude, he submitted that the application for a new pharmacy in the neighbourhood as indicated by him was both necessary and desirable to meet the pharmaceutical needs of the residents of the neighbourhood and take account of the future residential developments within it.

8.13 That concluded the Oral Hearing.

## 9 Consideration by the Panel

### 9.1 Neighbourhood

- 9.1.1 The Panel refers to its detailed site inspection at paragraph 5 of this report. The question that the Panel had to decide was whether the neighbourhood proposed by the Applicant, or that proposed by the PCT, or indeed any other neighbourhood was appropriate in connection with this application.
- 9.1.2 The application was for a new pharmacy at New Street, Ettingshall which is shown on the plan annexed at Appendix B. That plan is a replica of the plan at page 51 of the case papers. It is thought helpful if the Panel colour the respective neighbourhoods proposed by the Applicant and the PCT and have done so by colouring the Applicant's neighbourhood red and the PCT neighbourhood green.
- 9.1.3 The evidence presented within the case papers, highlighted at paragraph 1.9 of the Oral Minute gives the 2001 Census figures in respect of the deprivation of the Ettingshall area. The Panel was in no doubt that it was an area of some deprivation and was supported by the facts and figures referred to. Indeed, from their walk around the area adjacent to the Application Site and in the vicinity of the Ettingshall Medical Practice it was quite evident that this was a very much less than affluent area. There was some evidence of car ownership but not to the degree or to the extent one would find in a modern estate. The housing almost without exception appeared to be pre 1950s and

therefore at least 60 years old. Although there was no sign of actual dilapidation of properties the majority of houses being apartments, maisonettes or semi-detached houses and built at the time suggested, marked it out as an area of some deprivation. It was possible that much of the housing previously belonged to the Council, or indeed still did.

- 9.1.4 The Panel, as indeed had the Applicant and the PCT, had no difficulty in agreeing the southern, western and northern boundaries being Millfields Road, the railway line and the A41 Bilston Road / Wolverhampton Road / Wellington Road respectively.
- 9.1.5 The Panel accepted from no less than some four journeys up and down Wolverhampton Street that it was not a barrier between one side and the other. There were two crossing points controlled by traffic lights and a third pelican type crossing point, and as Mr Evans described it, it was not a dual carriageway but a straight forward two way road and certainly quite "crossable". At the Panel's time of inspection there was a fair amount of traffic on it in both directions but they had to admit that it was not a road that was so major and so busy that one would deem it as some sort of barrier.
- 9.1.6 It was accepted by the Panel that the residential housing ran the whole length of Wolverhampton Street on its western side, whereas on its eastern side there was very little actual housing on the road itself save at the southern end. The remainder of the road on the eastern side being a quite extensive park area (known as Hickman Park) together with some commercial property and non residential buildings. However, the Panel accepted Mr Evans' suggestion that the residential properties on both sides of Wolverhampton Street were not at all dissimilar.
- 9.1.7 Having conducted their walk from the Application Site to Bilston Town Centre and the Co-operative Pharmacy within the Lidl Store the Panel concluded that the walk was a fairly long one, over other than flat terrain, and indeed the bridge over the canal posed quite a danger to a mother with a pushchair for example when there were no footpaths or pavements on either side of the road as it crossed the bridge. The inclines on each side of the canal bridge were not inconsiderable either. The Panel concluded that it was not a journey that many would make on foot and it was far more likely that they would use public transport, their own car or a mixture of walking and public transport to get to Bilston Town Centre.
- 9.1.8 The same applies for the Parkfield area which, if not equidistant to the Town Centre from the Application Site was of a very similar distance.
- 9.1.9 The Panel felt that from the roundabout at the eastern end of Millfields Road on into the Town Centre, although initially containing some residential housing on the Black Country Route, as one approached the Town Centre itself it became what one would expect a pedestrianised area of mainly shops and commercial outlets to be, with flats or maisonettes above some of them. The Panel felt that the nature and environment of the Town Centre of Bilston was somewhat dissimilar to and bore very little relation to the nature of the area in New Street, Ettingshall. As Mr Ghateaura explained in his address to the Oral Hearing barriers between the two areas were distance, bridges, traffic flow, inclined walks and broken footpaths. The nature of the housing and the commercial outlets within the Applicant's neighbourhood were in the Panel's view within a markedly different area to Bilston Town Centre.
- 9.1.10 The Panel was of the view that the residential neighbourhood of the area to the east of Wolverhampton Street would in all probability migrate towards Bilston Town Centre rather than anywhere else for their day to day shopping and access to both medical and pharmaceutical services. The Panel did

recognise the Boots pharmaceutical premises and the various medical practices at the southern end of Wellington Road but the likelihood was that when coupled with day to day or even weekly shopping the residents would gravitate towards Bilston Town Centre.

- 9.1.11 That could not be said of the residential population of the Applicant's neighbourhood. Admittedly some to the west of Wolverhampton Street may well proceed towards the Town Centre for their daily shopping and medical and pharmaceutical outlets but in the Panel's view although Wolverhampton Street as they have indicated in this report was not a barrier, nevertheless it did provide an appropriate boundary to the neighbourhood.
- 9.1.12 They agree with a number of the submissions made that a boundary does not have to be something that is based on a Ward or other area boundary, neither need it be a barrier to access from one side to the other. It is simply, as in this case, a realistic division between neighbourhoods and the Panel concluded that the area to the east of Wolverhampton Street was far more part of Bilston Town Centre and Bilston itself, and that the area to the west of Wolverhampton Street and the remainder of the contested neighbourhood was more likely to be part of Ettingshall and Priestfield.
- 9.1.13 Therefore, despite a number of suggestions to the contrary, the Panel felt that the most realistic eastern boundary was indeed Wolverhampton Street. They have placed their boundary slightly to the east of that road so that the neighbourhood incorporates residential housing and other buildings immediately adjacent to Wolverhampton Street.
- 9.1.14 Accordingly the Panel's proposed and recommended neighbourhood is that edged yellow on the plan at Appendix B.

## 9.2 Adequacy of existing pharmaceutical services

- 9.2.1 There is no doubt in the Panel's view that there are a number of pharmaceutical outlets to the west, north and east of the Application Site and its proposed neighbourhood. Pharmacies 8-12 inclusive are accumulated to the west of the neighbourhood. Pharmacies 13 and 14 to the north and almost all those pharmacies are fairly adjacent to a medical practice.
- 9.2.2 Pharmacies to the east comprise those within Bilston Town Centre namely Pharmacies 2-6 inclusive together with Boots Pharmacy at 1 on the plan slightly to the north of the Town Centre at the Prouds Lane Health Centre. Again all those pharmacies are relatively adjacent to one or more medical practices.
- 9.2.3 Evidence was given of a 100 hour pharmacy application to be sited in the Town Centre not far from the Boots, Superdrug and Lloyds Pharmacies (Nos 2, 5 and 6 respectively on the plan). Despite the extended opening hours of that proposed pharmacy and indeed despite the extended opening hours of Morrisons within the Town Centre, the Panel has to consider whether those existing pharmacies provide adequate pharmaceutical services to the residents of their proposed neighbourhood, namely in the Ettingshall/Priestfield area.
- 9.2.4 Further, although it is not an incontrovertible way of looking at an area for provision of pharmaceutical services, the Panel felt that looking at the plan at Appendix B there is a marked gap in pharmacy outlet between Bilston Town Centre and the Parkfield area. The proposed application site is right in the middle of that gap.

9.2.5 The Panel concluded that the number of pharmacies was perhaps more than adequate for the area but the distribution of those pharmacies was not so.

9.2.6 The Panel feel that in this particular case it may be of assistance to set out their views on the application and appeal by listing the pros and cons of granting or refusing this application.

**9.2.7 Matters which indicate the application should not be granted:-**

9.2.7.1 It seems to the Panel that the residents both of their proposed neighbourhood and the surrounding areas are likely to gravitate to Bilston Town Centre and to a lesser degree to the Parkfield area for their daily shopping needs. In other words they have to go to those areas for banks, post office and, at present their pharmaceutical needs. They have obviously done this for many years, travelling there by car, or by public transport. No evidence was given to support the fact that anyone would walk from the application site into Bilston Town Centre. Indeed, on their walk the Panel saw no one walking that route.

9.2.7.2 The Panel accepted that there was a reasonable public transport system having regard to the bus services and the Metro service. Although the bus service into the neighbourhood itself was only hourly there was evidence that bus services along the road forming the boundaries of the neighbourhood were far more regular and with a relatively short walk could be accessed by people living in the New Street and Ettingshall areas for example.

9.2.7.3 There was evidence that the Metro service ran between Wolverhampton and Birmingham and it stopped at Bilston Central Crescent and Priestfield and ran approximately every 8 min during the day time. This can only be considered a good service. The Metro Station was some 200 metres or thereabouts from the Application Site.

9.2.7.4 The PCT maintains in support of its decision to refuse the application that the 2006 PNA highlights no lack of pharmaceutical services. On the contrary, there was no need to have any further pharmacy in this area. The PCT considers that the existing pharmacies can provide both present pharmaceutical services required and are capable of providing any further pharmaceutical services that may be commissioned by the PCT or may be required due to any increase in population because of residential development.

9.2.7.5 The PCT did give its reasoned explanation for its decision to refuse the application and those reasons are perhaps drawn together and highlighted in their letter of 16<sup>th</sup> October 2009 to the NHS Litigation Authority found on pages 97-101 of the case papers.

9.2.7.6 Apart from the relatively new Ettingshall Medical Centre providing medical services for some of the residents in the neighbourhood (albeit a fairly low number at present but with the aim that there would be 6,000 patients within another 4½ years) all other medical practices are relatively near to a pharmacy, and the residents of the neighbourhood who are registered with those practices are therefore likely to access their pharmaceutical services at a pharmacy nearby.

**9.2.8 Matters which indicate the application should be granted.**

**9.2.8.1 Deprivation**

It seemed to be uncontested that the area was relatively deprived when compared with the rest of Wolverhampton and more particularly the rest of England. Those deprivation facts and figures are highlighted, as already indicated, at paragraph 1.9 of the Oral Minute and were referred to at various times during the Oral Hearing.

#### **9.2.8.2 Public Transport**

The Panel fully accepts the points made above ( at paragraph 9.2.7 ) in favour of the application not being granted whereby they have highlighted the fairly regular bus service and the Metro service. However, the bus service into the neighbourhood itself was only hourly and, unless one was a pensioner or in receipt of any other benefit to exclude payment of public transport fares, the cost to a mother and young child without access to a car to access Bilston Town Centre, and the time taken to do so should they need pharmaceutical services, were all factors reflecting difficulties in accessing a pharmacy.

#### **9.2.8.3 Access**

Access to both Bilston Town Centre and the Parkfield area was only easy by car and with the figures of the 2001 Census relating to the very high percentage of residents without access to a car or van at all, it could be that the majority of residents would therefore need to use public transport.

The Panel have already accepted that unless one was a young relatively fit person one would not consider a walk from the Application Site to the Town Centre or to Parkfields. Indeed, the time taken by the Panel on its walk, the difficulty of the route due to the inclines referred to and the lack of pedestrian access over the canal bridge meant that walking the route was really not acceptable.

#### **9.2.8.4 New Development**

It was uncontested that there is to be some new development both from Persimmon Homes in the form of some 500 or so units and possibly one or two other minor developments throughout the neighbourhood where there is a certain amount of derelict industrial building and open and unused spaces. It was of course confirmed in evidence at the hearing that the Persimmon development was now back on track.

9.2.8.5 There is a school in the neighbourhood which would doubtless benefit from the granting of this application.

#### **9.2.8.6 The Opening of Ettingshall Medical Practice**

9.2.8.6.1 The Panel do not consider that simply because a medical practice opens that there should therefore be a pharmacy nearby. They have already however highlighted the fact that the existing pharmacies are all fairly near to a medical practice. However, the Panel took note of the criteria that the PCT exercised in opening a new medical practice at Ettingshall as one of the four medical centres it has opened due a Government initiative to make access to medical services more easy. There is no doubt that the PCT considered existing access to medical services by the

residents of this neighbourhood as being less than satisfactory for various reasons, one of them being for instance, public transport and perhaps most importantly the deprived nature of the neighbourhood concerned.

- 9.2.8.6.2 Whilst it is appreciated that the criteria for opening a medical practice is perhaps different from the criteria to be used in considering whether a pharmacy is necessary or desirable under the 2005 Pharmaceutical Regulations, nevertheless Panel Members felt that the criteria which was used by the PCT in opening the Ettingshall Medical Centre can equally be applied to this application for a new pharmacy.

#### 9.2.8.7 Existing distribution of pharmacies

As already highlighted in this report although there would appear to be more than an adequate number of pharmacies in the general area as outlined on the plan at Appendix B, it seems obvious that the distribution of those pharmacies leaves something to be desired having regard to the cluster of no less than 5 pharmacies in the Town Centre and a further 4 or 5 pharmacies some way to the west of the Application Site.

- 9.2.8.8 Finally the Panel gave some consideration to the fact that there had obviously been meetings and discussions between the Applicant and the Ettingshall Medical Practice which resulted in the Practice's letter to the FHS Appeal Unit dated 30<sup>th</sup> December 2009 giving support to the application.
- 9.2.9 Although not exhaustive the above comprises realistic lists of the pros and cons to the granting and/or refusing this application.
- 9.2.10 The Panel reminded itself of the wording of the necessary and desirable test as set out in Regulation 12 of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended). Having concluded on their appropriate and recommended neighbourhood it will be seen of course that there is a medical practice within that neighbourhood but no pharmacy. The nearest pharmacy in any direction is somewhere between 1.2 and 1.5 km away, a journey which the Panel did not consider appropriate for a pedestrian.
- 9.2.11 To some extent public transport provision was good and reasonable but in another way it could be considered spasmodic and slightly difficult to access. There could also be a cost of such transport which the more deprived could ill afford.
- 9.2.12 Therefore at present both provision of pharmaceutical service and any choice as to pharmaceutical service has to come from outside the proposed neighbourhood. Although choice was not mentioned by any of those appearing at the Oral Hearing the Panel obviously has to give consideration to it as part of its finding in connection with this application and it has to be said that on the basis that there is no pharmacy within the proposed neighbourhood then the choice of provision of pharmaceutical services must come from outside that neighbourhood as indicated above.
- 9.2.13 The Panel has to admit that it was not easy to come to a conclusion in this case but on balance they felt that the existing provision of pharmaceutical services could not be considered adequate within the meaning of the

Regulations and that there was a gap in the provision of pharmaceutical service for the reasons mentioned at paragraph 9.2.8 above.

9.2.14 In support of this recommendation the Panel refers to the deprivation of the area of the neighbourhood as a whole, the high percentage of non car owners, the distance involved to the nearest existing pharmacy ( including the route that has to be taken), and the proposed increase in population due both to the inevitable development and the increase in the transient population to the neighbourhood by the increase to 6,000 patients at the Ettingshall Medical Centre in the foreseeable future.

### 9.3 **Recommendation of the Panel**

Taking all the above into account the Panel unanimously recommends that the application of Pharmaunison Limited for preliminary consent prior to inclusion in the Pharmaceutical List at New Street, Ettingshall, Wolverhampton should be granted and the Applicant's appeal against the refusal of its original application to Wolverhampton City PCT, should be allowed.

**Dated** this                      day of January 2010

**Signed** .....

Mark Ovington - Chair

**APPENDIX A****ORAL HEARING ATTENDANCE LIST****FRIDAY 8 JANUARY 2010****WOLVERHAMPTON CITY PCT, CONISTON HOUSE, WEST ENTRANCE, CHAPEL ASH,  
WOLVERHAMPTON WV03 0XE****SHA/15347 – PHARMAUNISON LTD – APPLICATION FOR PRELIMINARY CONSENT  
PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT NEW STREET  
ETTINGSHALL, WOLVERHAMPTON****CHAIR** Mr Mark Ovington**PANEL** Mrs Muriel Loosemoore  
Mrs Vivien Lee**APPLICANT/APPELLANT**Pharmaunison Ltd Mr Randeep Ghateaura accompanied by two  
witnesses:  
a) Ms Lisa Corbett (Manager of the  
Ettingshall Neighbourhood Partnership)  
b) Councillor Sandra Samuels**INTERESTED PARTIES**Boots UK Ltd Ms Joanne Watson – Senior NHS Contracts  
ManagerMorrisons Supermarket Mr Kevin Tucker & Mr Derek Evans – Pharmacy  
Operations Manager

Wolverhampton City LPC Mr T Wedgbury – LPC Administrator

**WOLVERHAMPTON CITY PCT** was represented by Mrs Gill Shelley (Primary Care  
Contracting Manager)  
Mrs Lynne Allen (Director of Primary Care) and Mrs  
Pat Munger (Assistant Manager FHS Contracts)

**APPENDIX B**