

2<sup>nd</sup> February 2010

REF: SHA/15534

**APPEAL AGAINST LINCOLNSHIRE TEACHING PCT  
DECISION TO REFUSE AN APPLICATION BY  
LINCOLNSHIRE CO-OPERATIVE CHEMISTS LTD FOR  
PRELIMINARY CONSENT PRIOR TO INCLUSION IN  
THE PHARMACEUTICAL LIST AT MUNTJAC WAY,  
WITHAM ST HUGHES, LINCOLN LN6 9US**

**1 The Applications**

By application dated 17<sup>th</sup> February 2009, Lincolnshire Co-operative Chemists Ltd ("the applicant") applied to Lincolnshire Teaching Primary Care Trust ("the PCT") for inclusion in the pharmaceutical list at Muntjac Way, Witham St Hughes, Lincoln LN6 9US. In support of the application it was stated:

- 1.1 Witham St Hughs has grown dramatically in recent years with 650 new houses occupied in addition to the existing former RAF housing. The current number of dwellings stands at around 900 houses with planning permission for a further 150 homes on phase 2 of the development. Phase 3 of the Witham St Hughs development includes plans for a further 1,000 dwellings.
- 1.2 There are currently no pharmaceutical services in Witham St Hughs and the nearest pharmacies are 4 miles away at either Collingham or North Hykeham. A pharmacy in Witham St Hughs will dramatically reduce the need for extended journeys to obtain repeat medication and to access self-care.
- 1.3 The pharmacy will offer a repeat prescription collection service and the Applicant would be keen to provide any PCT commissioned enhanced services that would be appropriate for the neighbourhood.
- 1.4 As well as providing pharmaceutical services to Witham St Hugh's, the establishment of this pharmacy would improve access to self-care for a wider population in a number of surrounding villages.
- 1.5 In summary, the Applicant would repeat that the current level of pharmaceutical services in the neighbourhood is inadequate and the granting of this application would ensure pharmaceutical services are available to an ever growing population.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 18<sup>th</sup> November 2009 states:

- 2.1 At a meeting of the Pharmaceutical Services Committee held on Monday 16 November 2009, consideration was given to an application made by Lincolnshire Co-Operative Pharmacy Division Ltd. to establish a pharmacy in the village of Witham St Hughs. The application had been submitted under the NHS (Pharmaceutical Services) Regulations 2005, and the area had previously been determined as a reserved location.

- 2.2 After careful consideration, the Panel decided to not grant the application. Having considered the application in accordance with the regulations, the guidance to the regulations, and having taken into account all the relevant and available information, including the latest Pharmaceutical Needs Assessment (PNA), the Pharmaceutical Services Committee made this decision for the following reason:
- 2.3 "It was neither necessary nor expedient to establish a pharmacy in Witham St Hughs at this time as there was no evidence to suggest that services in the area were inadequate to meet patient needs and no such need had been identified in the PNA."

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 26<sup>th</sup> November 2009, the Applicant appealed against the PCT's decision. The letter states:

- 3.1 The Applicant writes to appeal the decision of NHS Lincolnshire not to grant their application to establish a pharmacy in the village of Witham St Hughs. In a letter from NHS Lincolnshire the Applicant is informed that the decision was made for the following reasons
- 3.1.1 *"It was neither necessary nor expedient to establish a pharmacy in Witham St Hughs at this time as there was no evidence to suggest that services in the area were inadequate to meet patient needs and no such need had been identified in the PNA".*
- 3.2 Witham St Hughs is a growing population with a significant number of new homes already occupied and plans for over 1,000 new dwellings on phases 2 and 3 of the development. The nature of the location and the new housing has attracted young families to the area and easy access to pharmaceutical services is necessary. The nearest pharmacies are 3.8 miles away at Collingham or 4 miles away at North Hykeham. The nearest GP surgeries are 2 miles away at Bassingham or 3.8 miles away at Collingham. A resident of Witham St Hughs must therefore take a round trip of at least 7.6 miles to access pharmaceutical services. The NHS Lincolnshire claim that there was *"no evidence to suggest that services in the area were inadequate to meet patient needs"* is illogical and inconsistent with the geographical facts.
- 3.3 The establishment of this pharmacy in Witham St Hughs would ensure a full pharmaceutical service be provided to local residents. This would include increased choice of NHS dispensing (a prescription collection service would reduce the need for extended trips to the nearest surgery or pharmacy), easy access to a pharmacist for consultation, much improved access to treatment and advice on minor ailments which also reduces the demand on GP appointments. Enhanced services (if commissioned by the PCT) such as those involving smoking cessation, sexual health and supervised administration of medicines would also greatly improve access to key health services for local residents.
- 3.4 The letter from Bassingham Surgery opposing the establishment of a pharmacy in Witham St Hughs is expected but predictably lacking in any understanding of the differences between a dispensing service and a full pharmaceutical service. They state that *"the application is neither necessary nor desirable as our existing service provision far exceeds what would be provided by an additional pharmacy"*. The surgery cannot provide access to a pharmacist for advice and consultation on the medication prescribed. The surgery cannot provide easy access to OTC medicines and self-care. The surgery does not provide a dispensing service on a Saturday.

- 3.5 Bassingham Surgery also claim that “*an additional pharmacy provider would undermine our ability to deliver the high standard of care and quality primary care services that our patients deserve and are accustomed to*”. A pharmacy at Witham St Hughs would not be an “additional pharmacy provider”, it would be the only pharmacy available as Bassingham Surgery offers a dispensing service not a pharmaceutical service. Given that Witham St Hughs is currently designated as a reserved location there will be a minimal financial impact on the surgery and there will be no impact on their core dispensing list of Bassingham patients. The Department of Health have repeatedly stated that there should be no need to cross subsidise primary care medical services with income from dispensing services in rural areas.
- 3.6 The second reason stated by NHS Lincolnshire for not granting this application was “*no such need had been identified in the PNA.*” To the Applicant’s knowledge, the PNA referred to was written in early 2005 and has not been updated since that time. Given the increasing population at Witham St Hughs, is it reasonable that such a document can still be considered relevant in November 2009?
- 3.7 Finally, to make the NHS Lincolnshire decision even more illogical is the fact that the old West Lincolnshire PCT chose to grant an application for a pharmacy in Witham St Hughs as far back as 2003 on the grounds that at that time it was considered both necessary and desirable to establish adequate pharmaceutical services to patients in the area. The pharmacy granted the application in 2003 subsequently did not open, however despite the building development and increasing population over the subsequent 6 years, it would appear the PCT now considers that pharmaceutical services are adequate.
- 3.8 In conclusion, the Applicant would repeat that the absence of pharmaceutical services within the ever growing village of Witham St Hughs by definition is inadequate to serve the local population and that the decision by NHS Lincolnshire not to grant this application continues to deprive persons living in this locality proper access to local pharmaceutical provision and the decision should be reversed.

#### **4 Summary of Representations**

This is a summary of representations received on the appeal. A summary of those representations made to the PCT are only included in so far as they are relevant and add to those received on the appeal.

##### **4.1 LINCOLNSHIRE LPC**

- 4.1.1 The stated reasons given by NHS Lincolnshire for not granting this application to establish a pharmacy in Witham St Hughes was that “*there is no evidence to suggest that services in the area were inadequate to meet patient needs, and no such need had been identified in the PNA*”.
- 4.1.2 The LPC is mindful that there are currently no pharmaceutical services in the neighbourhood agreed for this application.
- 4.1.3 The LPC have established that the PNA referred to when considering this application was a document produced in 2005 that has not been updated or reviewed since that time. Witham St Hughes is a developing area with significant numbers of houses having been added over recent years since the PNA was produced, and there are plans for further phases of significant development.
- 4.1.4 Further examination of the PNA document reveals that the area of Witham St Hughes is not actually mentioned, and it would appear that the interpretation

of the PNA in this case was such that if an area is not mentioned then it is deemed to have no unmet need. Lincolnshire LPC committee would take a very different view; being that no mention of an area in the PNA as it is formatted would suggest there are no services in that area and therefore there may well be unmet need.

- 4.1.5 As long ago as Sept 9<sup>th</sup> 2003 a pharmacy application was granted for Witham St Hughes by the PCT on the grounds it was considered both necessary and desirable to establish adequate pharmaceutical services to patients in the area. The pharmacy approved in 2003 subsequently failed to open. Lincolnshire LPC do struggle therefore to understand why six years later when there has been significant housing development in the area with no additional pharmaceutical services being established, NHS Lincolnshire now consider that services are adequate to meet patients needs.
- 4.1.6 In summary the Lincolnshire Local Pharmaceutical Committee hold the view that a pharmacy contract at Witham St Hughes is necessary and expedient to ensure the local provision of pharmaceutical services.

## 4.2 LINCOLNSHIRE LMC

- 4.2.1 The LMC accepts that Witham St Hughes has developed since 2004/05 and as such the population has gradually increased. Whether, in the current economic climate, the plans for further development of this area will continue at the planned pace are conjecture at best. Additionally, the fact that the PNA for this area is several years old, in itself, does not mean it is irrelevant: changes in service design and provision are best made when key indicators are met and in the LMC's opinion development in this area has not yet progressed to such a degree.
- 4.2.2 In rural areas where it is not practical to have a community pharmacist in every community, GP practices have provided dispensing services and the LMC believe there is a balance to be maintained in how this system is applied, so as not to jeopardise the services patients receive. The fact that a reserved location is usually determined as having a population of less than 2,750 residents is clearly set out in the Regulations and is there for a good reason in the LMC's opinion. It is a fact that the commercial viability of a community pharmacy requires a certain level of business turnover and the current population of the area in question has not reached that threshold, However, granting applications such as these, inevitably, gradually reduce the income received by local dispensing practices and undermine their ability to provide services, including dispensing. At the same time, it is likely that, to develop and provide a full range of community pharmacy services may require some level of subsidy for the provider organisation. At face value, to some extent, this appears to be working against the spirit of how the Regulations were drafted.
- 4.2.3 The LMC believes this application, taken in the context of the fact that this area is reserved, is to some degree speculative and granting the application sets a precedent and is to be avoided. The LMC believe the appeal should be rejected.

- 5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site of the proposed pharmacy.
- 5.2 It also had before it the responses to the Authority's own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to Regulations 35(1) reserved locations, and 12(1), the necessary or desirable test. In considering the latter test, it had regard in particular to Regulation 12(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted that the PCT had previously determined to accord Witham St Hughes reserved locality status.
- 5.7 The Committee noted that there was no dispute regarding the PCT neighbourhood as defined on a map (circulated to the parties). The Committee were content to accept the neighbourhood, being that of Witham St Hughes.
- 5.8 There is no pharmacy within the neighbourhood and therefore no choice of pharmaceutical provider or services for those living there. The Committee were mindful that this is just one of a number of factors as set out in Regulation 12(2) which must be considered. The Committee noted that services were available in Collingham 3.8 miles distant and North Hykeham 4 miles away. The Committee had no information regarding the amenities available in Witham St Hughes, however given the rural nature of the area the Committee viewed it as reasonable to assume that residents would be accustomed to accessing amenities elsewhere, e.g. North Hykeham or Lincoln, on a regular basis. On this basis, the Committee concluded that the application was not necessary.
- 5.9 The Committee noted the distances to the nearest pharmacies. Whilst the Committee had no information regarding car ownership, however it was mindful that such private transport was not always available during the day when pharmaceutical services may be required. The Committee noted the Applicant's comment that new housing had attracted young families to the area, and viewed this factor to be particularly relevant to that group. The Committee had no information by which to consider public transport provision.
- 5.10 The Committee noted that the population is not large in number, however the Applicant states that there has been development recently, with further new homes planned. The Committee further noted that no dispute had been raised on this matter. The Committee noted that there is a source of NHS prescriptions in nearby Bassingham, and whether or not individuals are dispensing patients, there is no pharmaceutical service (by a pharmacy) conveniently made available to them.
- 5.11 The Committee noted the LMC's comments regarding viability however were mindful that this is not a relevant consideration under the Regulations.
- 5.12 On balance, having had particular regard to access and noting that there is no choice within the neighbourhood, then the Committee was of the view that there was a gap in provision sufficiently high on the scale to conclude adequacy was not secured and it was expedient to grant the application.

## **6 Decision**

Accordingly, the Committee allows the appeal.

**Abby Richards**  
**Appeal Officer**

A copy of this decision is being sent to:

Lincolnshire Co-operative Chemists Ltd  
Lincolnshire Teaching PCT  
Lincolnshire LPC  
Lincolnshire LMC