

21<sup>st</sup> January 2010

REF: SHA/15493

**APPEAL AGAINST WEST SUSSEX PCT DECISION TO GRANT AN APPLICATION BY APOTEK LTD FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF THE JUNCTION OF LONDON ROAD AND SACKVILLE LANE, EAST GRINSTEAD**

**1 The Application**

By application dated 27<sup>th</sup> May 2009, Apotek Ltd ("the Applicant") applied to West Sussex Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of the junction of London Road and Sackville Lane, East Grinstead. In support of the application it was stated:

- 1.1 The neighbourhood for the purpose of this application will be referred to as "East Grinstead West" and is shown on the map in appendix.
- 1.2 This neighbourhood is bound to the North South and West by open countryside and to the East by the railway line which dissects East Grinstead.
- 1.3 This railway line forms a clear geographical boundary, with very few crossing points, and also forms a social boundary as the nature of the properties change from dense residential, to town centre retail.
- 1.4 The neighbourhood so defined comprises the two wards of Baldwins and Imberhorne with an aggregate population of more than 9,000 in 2001. A further reliant population in Felbridge, lies to the West of the neighbourhood defined. There is no pharmacy within this neighbourhood and therefore the provision of pharmacy services cannot be considered wholly adequate.
- 1.5 Whilst the PCT may take some note of provision offered in surrounding neighbourhoods, the distance from the proposed site of the application to the nearest pharmacy is 2.3km by car or 1.8km on foot. The Applicant does not consider a round trip of 4.6km by road or 3.6km on foot to be reasonably practicable on foot. The majority of the route is on a significant incline. Furthermore, the journey for residents to the West of the application site in Felbridge would be significantly longer than this.
- 1.6 As well as being the home of more than 9,000 residents the neighbourhood also includes several convenience stores, an M&S food-store a post office two dental practices, two junior schools, (Baldwins Hill and Halsford Park) and a large senior school (Imberhorne), several nursing homes, and an NHS sleep disorder clinic. It also includes several large industrial estates which further swell the population and the need for access to services.
- 1.7 There is no pharmacy in the neighbourhood and the journey to the nearest available pharmacy in another neighbourhood is a long one, up a significant gradient. The reliant population is substantial and, including schools, industrial estates and people resident to the West of the neighbourhood, goes well beyond the 9,000 resident population alone. For these reasons the Applicant believes that this application is both necessary and desirable.

**2 The PCT Decision**

The PCT considered and decided to grant the application. The decision letter dated 15<sup>th</sup> October 2009 states:

#### Site Visit

- 2.1 The committee members carried out a site visit on the morning of the meeting. East Grinstead sits just inside the West Sussex county border with Surrey and on both sides of the A22 which runs in a south-east to north-west direction. A railway line (now partially dismantled) runs in a south-west to north-east direction with the station set slightly off the main town centre within which there is a one-way traffic system. The layout of the town suggests that the historic town centre is to the south and east of the railway line and contains the commercial centre, wide shopping streets as well as established residential areas.
- 2.2 The part of the town to the north and west of the railway line is primarily residential with some evidence of light industry, mainly on the periphery. This area broadly conforms to the areas covered by the Baldwins and Imberhorne Wards which have a combined population, according to the 2001 census, of 9016. The housing stock is of a mixed nature with some large, detached houses and smaller properties, some in terraces. There are also a number of blocks of flats. The 2001 census shows that there were 3588 households in those combined wards of which 2994 (83.44%) were owner occupied with only 311(8.66%) being described as "social housing". The remainder of the households were privately rented. For the Mid Sussex (Non-Metropolitan District) - this area containing these two wards - those percentages were 80.24% and 10.15% respectively with the remainder being privately rented. This would suggest that these two wards are only slightly different in character to the area as a whole.
- 2.3 There is a small, light industrial estate running at the eastern edge of the area alongside the railway line to the north of the A22 but this becomes residential housing as it progresses northwards. There is also some evidence of light industry along the western end of the A22 before it meets with Felbridge when it crosses into Surrey.
- 2.4 In the immediate vicinity of the proposed pharmacy site there are several schools, churches, a dental practice, two nursery schools, a nursing home and small local shopping facilities provided by convenience stores including a Marks and Spencer "food only" store adjacent to one of the two garages at the western end of the West Sussex element of the A22.
- 2.5 The main access to East Grinstead town centre (and thus the existing pharmacies) from the proposed location is along the A22 which is a busy road with no cycle lane. No controlled pedestrian crossings were noted during the site visit and the presence of at least one speed camera suggests that traffic may be liable to exceed the urban speed limit in force. Residents of the area to the north of the A22 would need to use this route to go to the town centre; there are no other direct road connections over the railway line from that area. For those persons living to the south of the A22 they have the theoretical option of also accessing the town centre by using Park Road. This is just south of the A22 but as the two roads are so close together it was not considered that this provided a meaningful choice as both entered the one-way system only a matter of yards apart. The only other road access was along Garden Wood Road at the extreme southern edge of the residential area to the south of the A22. This was not considered to be a practical alternative route for the majority of those living to the west of the railway line as they would need to negotiate a good number of residential streets to reach Garden Wood Road.

#### Neighbourhood

- 2.6 The Committee considered the neighbourhood suggested by the applicant and also the views of those commenting on the application. It did not feel that East Grinstead, as a whole, should be considered to be a single neighbourhood, particularly as the east and west sides of the town were divided, with only three points of access by road, by the railway line of the still extant track-bed where the line had been taken up.
- 2.7 The Committee therefore determined the neighbourhood boundaries to be as follows:
- 2.7.1 East - northwards from Cockshead Wood along the track bed or railway line to where it meets the County boundary between West Sussex and Surrey.
- 2.7.2 North - westwards along the County boundary from the above intersection to where it cuts across the A22 at the junction with Copthorne Road (A264) intersected by the railway line.
- 2.7.3 West - eastwards along the A22 until the junction with Imberhorne Lane and then southwards along that lane until it intersects with the railway track-bed again at Cockshead Wood.

#### Necessary or Expedient Test

- 2.8 Necessary
- 2.8.1 The PCT representatives in attendance advised the committee that there had been no formal complaints or other notifications regarding any deficiencies in the provision of pharmaceutical services in the neighbourhood.
- 2.8.2 The Committee was aware that it needed to take into account the services provided to the residents of the defined neighbourhood by the existing pharmacies in East Grinstead (the "Holme-on-Spalding Moor" judgement). With that in mind the Committee determined that the provision of services was not wholly inadequate and that an additional pharmacy was therefore not necessary.
- 2.9 Expedient
- 2.9.1 In considering if the application was desirable the Committee noted the five factors mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005 as amended - Information for Primary Care Trusts;

#### Level of Access

- 2.9.2 There are three GP surgeries and 6 pharmacies in East Grinstead and they are all located to the east of the railway line. The GP surgeries are between 0 and 1.3 miles away from the applicants proposed location with the nearest alternative surgeries being in either Crawley Down (2.4 miles) to the west or Lingfield (2.6 miles) to the north. The current pharmacies are between 0.8 and 1.3 miles away from the proposed location with the nearest alternative pharmacies being at the previously mentioned Crawley Down (2.5 miles) and Lingfield (2.6 miles) to the proposed (data obtained from the website [www.nhs.uk](http://www.nhs.uk) )
- 2.9.3 As previously described, the road journey to reach those pharmacies from the neighbourhood means using one of the three road routes described in the "Site Visit" section of these minutes. For the reasons set out above, the Committee did not feel that the majority of neighbourhood's residents had suitable alternative to using the A22 to reach the town centre.

- 2.9.4 Boots has commented that the neighbourhood statistics for the Baldwins and Imberhorne Wards show that the level of car ownership “...is higher than the national average with approximately 45% of the households having access to at least two vehicles...”. The Committee’s own analysis of the 2001 census data for those two wards shows that the number of households having access to 2 or more vehicles is 44.94%. This compares quite closely with the Mid-Sussex (Non-Metropolitan District) percentage of 43.28%. The Committee considered that this is a more meaningful comparison rather than using national statistics which are influenced by a wide range of factors irrelevant to the matter under consideration. The number of such households in the defined neighbourhood is thus quite typical of the levels of access to vehicles in this part of West Sussex and does not support any suggestion that the neighbourhood’s residents are any more independently mobile than those in surrounding areas.
- 2.9.5 A local bus service (Southdown service 236) connects the neighbourhood to East Grinstead town centre. Whilst the journey time is only a few minutes, this runs only every two hours and is hardly convenient.
- 2.9.6 The Committee therefore considered that the proposed pharmacy would provide greater access to the full range of pharmaceutical services in the neighbourhood and further noted that the core hours were spread over all weekdays and Saturdays.

#### Choice & Diversity

- 2.9.7 The Committee accepted that it was not axiomatic that every neighbourhood needed to contain a pharmacy to ensure that residents had access to, and a choice of, a provider of pharmaceutical services. However, the Committee was of the view that a neighbourhood containing some 9000 residents required to travel to an adjoining neighbourhood to access the full range of services, meant that there was not currently an acceptable level of choice in service provider.

#### Innovation of Service Delivery

- 2.9.8 The applicant has shown no innovation of service delivery in its application.

#### Services to Specific Populations/to meet Disease Needs

- 2.9.9 The applicant has not identified any particular services it would offer.
- 2.9.10 The former Mid Sussex PCT’s Pharmacy Needs Assessment had not shown specific requirements for the population.

#### Overall Longer Term Impact

- 2.9.11 The Committee considered that there was nothing of relevance to affect the longer-term impact.

#### Consideration

- 2.9.12 The Committee, having considered the above matter, was of the opinion that it was not necessary to approve the application but that, on the scale of adequacy, the provision of pharmaceutical services was not wholly adequate for the reasons set out above and that it was therefore desirable to approve the application in order that this could be achieved.

Decision

2.9.13 The Committee therefore decided that, whilst the application was not necessary it was expedient and duly granted the application.

### **3 The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 2<sup>nd</sup> November 2009, Lloyds Pharmacy Ltd ("the Appellant") appealed against the PCT's decision. The grounds of appeal are:

- 3.1 There is no evidence to suggest that residents have difficulty accessing pharmaceutical services which are currently conveniently located close to medical services in the area.
- 3.2 The Appellant also feels 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.
- 3.3 There is no evidence of an inadequate pharmaceutical service in the neighbourhood therefore the Appellant respectfully asks the FHS Appeal Unit to uphold this appeal.

### **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 PRIMARY CARE SUPPORT SERVICE, ON BEHALF OF THE PCT**

- 4.1.1 It is noted that the appellant has not disputed the neighbourhood as defined by the PCT and it is thus inferred that they accept that the applicant's proposed pharmacy site is in an entirely different neighbourhood to any pharmacy contractor currently providing services in East Grinstead. More tellingly, they have not specifically disputed any of the detailed rationale behind the PCT's decision and it is thus also inferred that they accept the statements made as accurate. However the submission of a somewhat generic appeal does rather inhibit the PCT's ability to respond in any meaningful way.
- 4.1.2 For example, they say that there is no evidence to suggest that residents have difficulty in accessing pharmaceutical services at present. But they have not submitted any evidence to contradict the PCT's view that the local geography presents such difficulties. As is made clear in the decision letter, the PCT's neighbourhood contains some 9000 residents, yet the neighbourhood contains no community pharmacies. These are all located to the east of the former railway line (and still extant track bed) which forms a very effective barrier between the PCT's neighbourhood and the eastern half of East Grinstead. Residents of the neighbourhood thus have to travel some distance to access pharmaceutical services, probably by car as the only bus service linking the two halves of East Grinstead runs only every two hours and is hardly convenient. Furthermore, access by road across the track bed is limited to only three points and two of these are very close together and thus, realistically, there are only two choices. The appellant has not taken issue with these specific points. How can they then suggest that this level of access is without difficulty?

- 4.1.3 Furthermore, whilst it is not disputed that the current pharmacies “...are *conveniently located close to medical services in the area.*” this appears to ignore the extended role of community pharmacies, particularly as the providers of minor ailment advice and commissioned Enhanced Services. Pharmacies have long since ceased to exist solely to dispense GPs’ prescriptions. This statement also ignores the significant percentage of repeat prescriptions that are issued and which do not require the patients’ attendance at one of the “...*conveniently located...medical services...*”. Is the appellant arguing that the residents of the PCT’s neighbourhood should not be able to benefit from this extended role of community pharmacists as well as having the choice of a pharmacy in the neighbourhood at which any repeat prescriptions can be dispensed?
- 4.1.4 Finally, the appellant appears to have adopted a single sharp edge for the concept of adequacy rather than a sliding scale which has wholly adequate at one end and wholly inadequate at the other. The PCT does not contend that an additional pharmacy is necessary and accepts that the current level of service provision is not wholly inadequate. But the PCT but is firmly of the view that, on the scale of adequacy, the complete absence of any pharmaceutical provider in a neighbourhood of some 9000 residents does not make the level of access wholly adequate either. In reaching this view it took account of the views expressed by Lord Justice Laws in R v Appeal Authority ex parte Lowe (2001) and approved the application as desirable on that basis.
- 4.1.5 The PCT therefore wishes to maintain its decision for the detailed reasons set out in its minutes and decision letter and respectfully requests the Appeal Unit to reject this appeal.

#### 4.2 CHARLES RUSSELL LLP, ON BEHALF OF THE APPLICANT

- 4.2.1 In granting the Applicant’s application, the PCT concluded that it was at least expedient for the following reasons:
- 4.2.2 It would provide greater access to the full range of pharmaceutical services in the neighbourhood, including that the proposed core hours were spread over all weekdays and Saturdays. In reaching that conclusion, the PCT had carried out a site visit and found that:
- 4.2.2.1 existing pharmacies were at least 0.8 miles away;
- 4.2.2.2 patients could only be expected to access the nearest pharmacies via the A22 “*which is a busy road with no cycle lane*”. The PCT further stated that “*no controlled pedestrian crossings were noted during the site visit and the presence of at least one speed camera suggests that traffic may be liable to exceed the urban speed limit in force.*”
- 4.2.2.3 The local bus services “*runs only every two hours and is hardly convenient*”.
- 4.2.2.4 Whilst car ownership may be higher than the national average, ownership was similar to other neighbourhoods in this part of West Sussex “*and does not support any suggestion that the neighbourhood’s residents are any more independently mobile than those in surrounding areas.*”

- 4.2.3 There was currently an absence of reasonable choice in the neighbourhood.
- 4.2.4 Lloyds seek to appeal that decision, but give no reasons why the PCT's findings in relation to the above were flawed, or why the NHSLA should reach a different decision to that reached by the PCT.
- 4.2.5 On behalf of the Applicant, Charles Russell invite the authority to uphold the PCT's decision for the following reasons:

#### NEIGHBOURHOOD

- 4.2.6 The neighbourhood is the area bordered by: the railway line to the east; open land to the south of Garden Wood Road to the junction of Crawley Down Road/Rowplatt Lane to the south; open land to the west of Rowplatt Lane to the west; and open land to the north of Copthorne Road/Furze Lane/Lowdell's Lane/Furze Field Road to the railway line to the north. This is shown on a map attached to the Applicant's application at page 18. The railway line effectively splits East Grinstead into two halves; it acts as a barrier between those two halves since it has limited crossing points and therefore represents a neighbourhood boundary.
- 4.2.7 The neighbourhood contains a large residential population and also a range of services, including several convenience stores, a post office, two dental practices, petrol stations, two junior schools, a large senior school, several nursing homes and two large industrial estates.

#### RELIANT POPULATION

- 4.2.8 In assessing the adequacy of the current provision of pharmaceutical services, regard should be had to the large population both resident in and visiting the neighbourhood.
- 4.2.9 According to the 2001 census, there are 10,568 people living in the neighbourhood. This creates a significant demand for pharmaceutical services.
- 4.2.10 In addition, a number of people visit the neighbourhood as part of their daily lives. For example, the proposed pharmacy is in close proximity to Imberhorne Secondary School which has approximately 1,700 pupils aged 11 to 18. In addition, there are two Primary Schools - Baldwins Hill which has approximately 100 pupils and Halsford Park which has approximately 400 pupils. A large number of people (including pupils, parents and members of staff) therefore visit the neighbourhood or remain in the neighbourhood during the day to attend the schools.
- 4.2.11 There are also two industrial areas at the western and eastern ends of the neighbourhood which attract workers and visitors on a daily basis.

#### ACCESS TO EXISTING PHARMACIES

- 4.2.12 There are no pharmacies in the neighbourhood. In order to access pharmaceutical services, those in the neighbourhood must therefore travel to other neighbourhoods. The nearest pharmacies are located in East Grinstead to the east of the railway line. However, those pharmacies do not provide a wholly adequate pharmaceutical service in the applicant's neighbourhood by reason of:

- 4.2.12.1 The distance to existing pharmacies. The pharmacies are located between 1.7 kilometres and 2.6 kilometres from the proposed pharmacy by the most practicable route.
- 4.2.12.2 Busy roads. Those in the neighbourhood who require access to pharmacies to the east of the railway line will almost certainly have to walk along the A22, which is the main road from Eastbourne to London. The A264 merges with the A22 at the western edge of the neighbourhood and the two routes share the same carriageway until the A264 splits from the A22 to the east of the railway line. The A22 through the neighbourhood therefore comprises of two routes (the A22 and the A264), which is a major source of congestion. It is a busy road with no crossing points and represents a barrier to access.
- 4.2.12.3 Poor public transport. The neighbourhood is only served by one bus, which runs once every 2 hours. A patient may therefore have a round-trip of several hours in order to access pharmaceutical services from existing pharmacies by bus.
- 4.2.12.4 Difficulties with access by car. Whilst car ownership in the neighbourhood is higher than the English average, 13% of those in the neighbourhood have no car or van and a further 39% have only one car or van (2001 census). Many of those who require access to pharmaceutical services in the neighbourhood therefore have no car or van with which to do so (either because they do not own a car or van, or because the only car or van is in use by another member of the household). Even if the patient does have access to a car, there are barriers to accessing existing pharmacies by car, including congested roads (in particular, the A22) and limited and expensive car parking.
- 4.2.13 In contrast, a pharmacy at the Applicant's proposed site would be easily and conveniently accessible to all those in the neighbourhood.

#### CHOICE

- 4.2.14 With no pharmacies in the neighbourhood patients do not have a reasonable choice of either pharmaceutical services or service providers.

#### CONCLUSION

- 4.2.15 In conclusion, for the reasons given above, those given in the Applicant's application and those given by the PCT in granting this application Charles Russell ask that the Litigation Authority dismisses the appeal by Lloyds and grants their client's application as being at least expedient in order to secure, in the neighbourhood, the adequate provision of pharmaceutical services.

## 5 Consideration

- 5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site (or location) of the proposed pharmacy.
- 5.2 It also had before it the responses to the Authority's own statutory consultations.

- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to Regulation 12(1), the necessary or desirable test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) 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 the PCT neighbourhood as shown on a map, which had not been disputed by the Appellant. The Committee had regard to the Applicant's proposed neighbourhood which differed from the PCT neighbourhood in its western and northern boundaries, enclosing more of the surrounding open countryside. On considering the PCT site visit, the Committee were of the view that the critical boundary was the train track running through the centre of East Grinstead and therefore determined the neighbourhood to be that urban part of East Grinstead to the west of the train track without specific boundaries to the west and north.
- 5.7 The Committee noted that there are no pharmacies within the neighbourhood. The Committee reminded itself that it is not axiomatic that every neighbourhood should have a pharmacy and had regard to those on the pharmaceutical list in the adjacent neighbourhood to the east. The Committee accepted that there is no choice of either provider or services for those within the neighbourhood and were mindful that choice is one of several factors to which it shall have regard under Regulation 12.
- 5.8 The Committee considered access to existing pharmacies and had regard to comments from the PCT and Applicant regarding the difficulties for those within the neighbourhood. The Committee noted comments that there are only three crossing points over the train track, and that the most likely route for most would be the A22 London Road which is stated to be a busy main road with no pedestrian controlled crossing points and speed cameras in force. The Committee further noted that although a bus service is available, it is 2 hourly and therefore cannot be considered a reasonable mode of transport for those requiring pharmaceutical services. The Committee were of the view that access for those on foot could not be considered convenient. The Committee noted comments that there is a good level of car ownership however were mindful that private transport is not always available to members of households at home during the day. The Committee further noted comments regarding congestion on the A22 and limited parking opportunities. The Committee noted that the Appellant had not sought to dispute these issues.
- 5.9 The Committee noted that the neighbourhood population is stated by the Applicant to be 10,568 according to the 2001 census figures. The Committee accepted that this is a significant population. The Committee noted that there are a good range of amenities within the neighbourhood, albeit no GP surgery.
- 5.10 In view of the difficulties regarding access for the sizeable population within the neighbourhood, the Committee concluded that weight should be given to the matter of choice.
- 5.11 The Committee noted that at 2.9.12 the PCT had granted the application on the basis the provision of services were not wholly adequate, which is not the required test. However the Committee concluded that taking into account the identified difficulties of access and the weight to be given to choice the gaps were sufficiently high on the scale to conclude adequacy was not secured and it was expedient to grant the application.

## **6 Decision**

The Committee was of the view that the proposed pharmacy was expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeal.

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

A copy of this decision is being sent to:

Charles Russell LLP, on behalf of Apotek Ltd  
Lloyds Pharmacy Ltd  
Primary Care Support Service, on behalf of West Sussex PCT  
West Sussex LPC