

11<sup>th</sup> February 2010

REF: SHA/15548

**APPEAL AGAINST MID ESSEX PCT DECISION TO REFUSE AN APPLICATION BY VILLAGE PRIMARY CARE SERVICES LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT 30 BROOK HILL, LITTLE WALTHAM, CHELMSFORD CM3 3LL**

**1 The Application**

By application dated 1<sup>st</sup> July 2008, Village Primary Care Services Ltd (“the applicant”) applied to Mid Essex Primary Care Trust (“the PCT”) for inclusion in the pharmaceutical list at 30 Brook Hill, Little Waltham, Chelmsford CM3 3LL. In support of the application it was stated:

The Neighbourhood

- 1.1 For the purposes of this Application Village Primary Care Services Ltd defines the neighbourhood as being centred on Little Waltham and the area 2.4 km (1.5 miles) around, including the village of Great Waltham (Map 1).
- 1.2 The pharmacy to be provided by Village Primary Care Services Ltd will be situated alongside the general medical practice (GMP) located at 30 Brook Hill, Little Waltham, Chelmsford, CM3 3LL (Maps 2 and 3).

Little Waltham and Great Waltham

- 1.3 The immediate neighbourhood of Little Waltham and Great Waltham lies to the north of the county town of Chelmsford in a rural area surrounded by agricultural land and with a sizeable conservation area within. The majority of the population lives within the two main villages which are separated by the B1008 and the river Chelmer (Map 3). A significant number of people also reside in the villages surrounding the immediate neighbourhood. Little Waltham originally mentioned in the Domesday Book, has a stable population encompassing many generations of a fundamentally rural, farm-working community.

Population

- 1.4 The estimated population of the immediate neighbourhood is 3506. the wider neighbourhood to include Great and Little Leighs is approximately 5150.
- 1.5 These figures are taken from Essex Borough Council records and include 1278 in the Little Waltham Parish and 2228 in the Great Waltham Parish. Great and Little Leighs have a total population of 1644 by the same records (Appendix A).
- 1.6 The development of Broomfield Hospital and the improved and rapid rail-links to London has introduced a new breed of professional whose working patterns bring new challenges to the services offered by the community and it is this along with new developments at Great Leighs that has seen the population increase around Chelmsford. The rate of population growth was forecast to be >7% this decade based on figures from the 1991 and 2001 census data.

Transport Services

- 1.7 Both villages are served by the First Group bus operator. The 352 route travels from Chelmsford to Halstead via Little Waltham and Great Leighs, whilst the 33 route covers Chelmsford to Stansted via Great Waltham (Appendix B).

## General Medical Provision

- 1.8 Lithe Waltham and Great Notley Surgery based at 30 Brook Hill, Lithe Waltham and Notley Green, Braintree serves a population of approximately 16,100. The practice area encompasses the immediate and wider neighbourhood, as defined above, as well as the village of Great Notley. A significant number of patients come from the outlying villages of Pleshey, Ford End, Chatham Green, Willows Green, Bannister Green, Rayne and Black Notley. At present the population within the immediate and wider neighbourhood are receiving medications through the surgery dispensary.
- 1.9 Little Waltham and Great Notley Surgery had XXXX prescription items for the quarter ending March 2008.

## Current Provision

### Current Pharmaceutical Provision

- 1.10 There are no pharmacies serving the area of the neighbourhood as defined above, nor are there any in the close vicinity of the neighbourhood (Map 4).
- 1.11 To the north of the neighbourhood there is provision at the Tesco instore pharmacy, Notley Green more than 9km (5.7 miles) from the site of this application.
- 1.12 To the south there are several pharmacies serving the Broomfield and Melbourne areas, the nearest of these to the application site is Shadforth Pharmacy on Broomfield Parade. This is at a distance of 4.8km (3.0 miles).
- 1.13 To the south east in Springfield there are two pharmacy providers: Peoples Pharmacy (Torquay Road) and The Pharmacy (Clematis Tye). The nearest of these is The Pharmacy at a distance of 4.5km (2.8 miles).
- 1.14 To the East and the West there is no pharmacy provision within 10km.

### Transport to Existing Provision

- 1.15 There is one bus route though Little Waltham which passes the Broomfield parade where the Shadforth pharmacy is situated. In the opposite direction this route passes Great Notley although a walk from London Road though Great Notley is then required to reach the Tesco Instore pharmacy. This route departs Little Waltham only twice an hour from Monday to Saturday (Route 352 - Appendix A).
- 1.16 Great Waltham is served by one bus route (Route 33 - Appendix A). This passes though Great Waltham from Stansted Airport to Chelmsford. This departs once each hour only Monday to Saturday.
- 1.17 There is no public transport link from the application site to the closest pharmacy (The Pharmacy, Clematis Tye - 4.5km/2.8km).
- 1.18 The applicant, Village Primary Care Services Ltd, requests the PCT to take account of the large number of residents within the neighbourhood and the lack of readily available pharmaceutical services, in determining this application to the pharmaceutical list.
- 1.19 The applicant also asks the PCT to take note of the fact that currently the patients within the neighbourhood are receiving their medications from the local dispensing practice. It is unlikely, therefore, that there will be any meaningful adverse effect on any of the above-mentioned pharmaceutical contractors. For that reason there will be no prejudice to the proper provision of pharmaceutical services to the neighbourhood.

- 1.20 Village Primary Care Services Ltd will bring to the community, not only an improvement to the current dispensing arrangement, but with proper pharmaceutical provision the availability of over the counter medicines.
- 1.21 In addition, close day-to-day working links between the pharmacist and the GMP, Little Waltham Surgery, will aim to emulate the links formed between pharmacists working in secondary care and their medical colleagues. The pharmacist will link, in particular, with the provision of chronic disease care (diabetes, coronary heart disease, COPD and asthma, for example) and have input at the prescribing stage. This will benefit both patients registered with the practice and the PCT, with a concomitant avoidance of duplication of skills and services.
- 1.22 The applicant would also point out that with a population of greater than 2,750 patients within 1.6km of the proposed pharmacy, Little Waltham is not a Reserved Area.

#### Conclusion

- 1.23 Not only are none of the above services provided in the neighbourhood of the proposed Village Primary Care Services Ltd pharmacy, there are, in fact, no services being provided at all.
- 1.24 For that reason the applicant, Village Primary Care Services Ltd, believe that their application for admission to the Mid Essex PCT Pharmaceutical List should be granted as being both necessary and desirable and as having no adverse effect on the proper provision of pharmaceutical services in the neighbourhood.
- 1.25 In addition, as the neighbourhood is “controlled” the applicant realises that their application should also pass the “prejudice” test.
- 1.26 There are no pharmaceutical services being provided in the neighbourhood, dispensing doctors do not provide pharmaceutical services, therefore there can be no prejudice to the proper provision of pharmaceutical services.
- 1.27 The applicant also believes that there will be no prejudice to the proper provision of general medical services as the practice has a total list size of XXXX and will continue to dispense to approximately 4,500 patients.
- 1.28 Therefore, the applicant believes that there will be no prejudice to the provision of either pharmaceutical or general medical services.
- 1.29 In conclusion, the application satisfies all the requisite tests and the applicant believes that it should be granted.

## 2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 11<sup>th</sup> November 2009 states:

#### The Neighbourhood

- 2.1 The neighbourhood recommended by Family Health Services was agreed by the Committee as Essex Regiment Way (A130) to the west, turning south along Braintree Road/Main Road (B1007) past Thorleys Farm, cutting across on a footpath through Croxtons Mill to Back Lane to Essex Regiment Way.

#### Reserved Location

- 2.2 The Committee discussed whether the 1.6km radius of the proposed site around Little Waltham should be designated as a Reserved Location. The patient list numbers were not clear as the boundary cut through Great Waltham and it was therefore agreed that a printout of patients in Great Waltham should be obtained to identify those patients who lived within the 1.6km radius from the proposed pharmacy. The Committee agreed that if the total number of patients was below 2,750 a reserved location would be declared under Regulation 35.
- 2.3 From the printout it appeared that there were 613 patients in Great Waltham living within the 1.6km of the proposed pharmacy. The individuals on a patient list with a postal address of Little Waltham totalled 1463. The number therefore in this case used for the purposes of the reserved location is 2076.
- 2.4 The Panel agreed to determine the area as a Reserved Location under Regulation 35 as the number of patients on lists is less than 2750. Therefore the prejudice test did not apply and the Panel considered Regulation 12, whether the application was necessary or expedient.

#### Necessary or Expedient - Regulation 12

- 2.5 The Panel carefully considered the application, comments received, local information regarding other services in the area and the Pharmaceutical Needs Assessment for Mid Essex.
- 2.6 With regard to Adequacy, the services are a mixture of dispensing and prescribing. The Committee noted the three circle map included in the application and noticed that the applicant had shown a 1 mile radius circle around the proposed premises, not kilometres.
- 2.7 It was noted that the only complaints received recently were from patients living in the Broomfield area who had lost their dispensary status due to the change in the Chelmsford rurality boundary.
- 2.8 It was noted that pharmaceutical services are more limited in rural areas such as Little Waltham and the majority of patients living in the area were obtaining their medication from the dispensary at the surgery.
- 2.9 The Committee were aware that there were few facilities in Little Waltham and patients generally had to travel outside the village for shopping/entertainment and probably used Chelmsford.
- 2.10 A nursing home had recently opened near Broomfield hospital site which catered for approximately 150 residents and it was noted that pharmaceutical services were currently being provided from Chelmsford.
- 2.11 The Committee noted that residents in Little Waltham were dispensing patients and that the pharmaceutical services, other than dispensing, e.g. access to over the counter medicines, were being provided by community pharmacies outside the neighbourhood which were easily accessible to residents of the village.
- 2.12 Taking all the above into consideration, the Committee agreed that the application was neither necessary nor expedient under Regulation 12 as adequate pharmaceutical services were already provided to residents within the neighbourhood and accordingly refused the application.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 4<sup>th</sup> December 2009, the applicant appealed against the PCT's decision. The letter states:

#### ADEQUACY

- 3.1 The company understands well that services do not have to be available within a neighbourhood for there still to be an adequate provision of pharmaceutical services to patients within that neighbourhood. Such services may be provided to an adequate standard by a pharmacy or pharmacies outside the boundaries of the neighbourhood and this is what the PCT's case depends upon. In these circumstances it is a false case.
- 3.2 It surely exceeds expectations that truly adequate pharmaceutical services can be provided to all patients within a neighbourhood of 2 miles diameter by a pharmacy some three miles from the centre of that neighbourhood.
- 3.3 Furthermore, the PCT must be wrong in its decision that that standard of adequacy of such service provision is preferable to the standard which would be provided by a pharmacy which would be sited at the centre of that neighbourhood and which will provide many more advanced and enhanced services than are currently being provided to the Little Waltham neighbourhood patients.
- 3.4 The Guidance (September 2009 revision) on page 15, paragraph 9 reinforces this and informs PCTs that "*securing the adequate provision is the key for PCTs*".
- 3.5 There is little or no provision of pharmaceutical services at present for the patients of Little Waltham, little provision from outside the neighbourhood and no provision from within.
- 3.6 It is necessary to relieve this state of inadequacy and expedient to grant the company's application in order to do so.

#### Adequacy of access to current pharmaceutical services

- 3.7 The applicant would draw the attention of the Appeal Body to a fact which the PCT fails to address that the nearest other pharmacy contractors are some 3 miles or more away from the applicant's proposed site and that there is no bus service between the Little Waltham surgery, the applicant's site, and the nearest pharmacy at Clematis Tye where pharmaceutical services may or may not, mostly not, be available.
- 3.8 The applicant drew attention to this in their original application which they submitted in July 2008.
- 3.9 The applicant also drew attention to the inadequacy of access to services at the other pharmacies resulting from poor local transport. Chelmsford Borough Council statistics for Little Waltham Parish (drawn for 2001 census data) show that 1 in 7 households (15%) have no car or van. The pharmacies are between 3 miles and 5 miles from the centre of the neighbourhood or, putting it another way, between 2 miles and 4.7 miles from the nearest edge of the neighbourhood to any pharmacy or between 4 and 6.7 miles from the further edge.
- 3.10 The PCT considers this reasonable. Yet if this standard of access were to obtain in urban areas then pharmacies would be 6 miles apart rather than there being several on each High Street. The company is certain that no reasonable patient would consider that acceptable. Indeed, the Little Waltham Parish Council seems not to do so.

- 3.11 The company believes that on the grounds of access alone, as there are no services being provided from within the neighbourhood at present, service provision is totally inadequate. It is, after all, at least essential for patients to be able to readily access services for them to be adequate.
- 3.12 This conclusion does not depart from the judgement of Mr Justice Kay in the case R v FHAA, ex parte Tesco, July 20 2008, where he supported the PCT which found that existing pharmacies *within the neighbourhood* were able at the time and likely in the future to meet the demand from patients (in the) neighbourhood. On those grounds the PCT had refused an application by Tesco to provide pharmaceutical services. There are no pharmacies in the neighbourhood where the applicant proposes to site their pharmacy therefore it is necessary to grant the application to ensure the provision of services.

Service provision by the existing pharmacies between 3 and 5.7 miles from the centre of their agreed neighbourhood

- 3.13 The company set out the comparative standards of service provision, between existing services and our proposed services, in its Application to the PCT in July 2008 (pages 5 to 17) and again, briefly, in its Comments letter in reply to the PCT in August 2009. There have been no substantial changes since that time and the applicant holds to all their comments as set out in their letter to the PCT of August 2009. The letter is enclosed for the convenience of the Appeal Body.
- 3.14 To further support the applicant's case they refer the Appeal Body to the September 2009 revision of The Guidance, page 16 10(c):
- 3.14.1 *"Whilst 'adequacy' is the first question to be addressed, the true question is to determine the point, on the facts at which an application lies on the sliding scale or spectrum of adequacy".*
- 3.15 In other words, place the applicant's proposed services on the scale first before adding any existing services to the scale for comparison.
- 3.16 A careful perusal of the application (pages 5 - 17) will clearly show that when the existing pharmacy services are placed on the same sliding scale, the company's pharmacy will be very much further towards the totally adequate end of the scale. And it should be remembered that there is currently no pharmaceutical service provision from within the neighbourhood and that the applicant's services, which will be provided from within the neighbourhood rather than from 3 miles outside it, will be readily available to all corners *and will be advertised as such*. That alone should be sufficient reason for the PCT to grant the application on the grounds of necessity.
- 3.17 However, the PCT failed to consider this comparative degree of adequacy of service provision provided by list pharmacies outside the neighbourhood, as suggested by Mr Justice Potts in the High Court. Indeed, on the subject of adequacy, the PCT noted in its letter of refusal of the application;
- 3.17.1 *"With regard to adequacy, the services are a mixture of dispensing and prescribing".*
- 3.18 The only other reference to pharmaceutical services made by the PCT in that letter is a little lower down when they comment:
- 3.18.1 *"that the pharmaceutical services, other than dispensing, e.g. access to over the counter medicines were being provided by community pharmacists outside the neighbourhood which were easily accessible to residents of the village".*

- 3.19 The company comments on OTC provision a little later. The company has already commented upon the lack of easy access to services.
- 3.20 The company is certain that the Appeal Body would agree with it that there is a great deal more to the provision of pharmaceutical services to a neighbourhood than simply “dispensing and prescribing” and OTCs. If the PCT does not understand that, then that could be the reason for their belief that pharmaceutical service provision in the neighbourhood is adequate.
- 3.21 The applicant now passes to the decision made in the High Court by Sir Louis Blom-Cooper. On discussing adequacy Sir Louis Blom-Cooper commented:
- 3.21.1 *“Thus the decision-maker asks himself whether there is or is not adequate provision of the resources specified in the application”*
- 3.22 As the applicant has set out above, the PCT as the decision-makers failed to do that despite this company setting it all out clearly in comparative tables on pages 5 - 17 of its application. Had they done so they would have noted the vast discrepancy of service provision in favour of the company and that that provision was from within the neighbourhood.
- 3.23 All the above provides evidence that service provision from within and outwith the neighbourhood is not adequate and that to make it adequate it is necessary to grant the application.

#### CHOICE

- 3.24 The applicant believes they cannot do better here than to quote an elected official of the patients in Little Waltham, the Parish Council. The PC said that they:
- 3.24.1 *“strongly support tins application and feel it will directly benefit the parish”*
- 3.25 No expression of support could be more clearly or succinctly put than that yet by its lack of comment the PCT appears to have placed little value upon it. The Parish Council wishes to have choice. Yet throughout its entire letter of refusal of the application the PCT does not mention the words “choice” or “competition” once.
- 3.26 However, the 2005 Regulations, 12(2), referring to the necessary or desirable test, state that PCTs...
- 3.26.1 *“shall have regard in particular as to (b) whether the recipients of pharmaceutical services already have a reasonable choice with regard to – (i) the pharmaceutical services provided in the neighbourhood in which the premises named are located, by persons included in a pharmaceutical list and (ii) the persons included in a pharmaceutical list from whom such recipients may obtain pharmaceutical services in...” –*
- that neighbourhood.
- 3.27 The company would point out that as there is only a dispensing practice in the neighbourhood and that, by regulation, that practice cannot provide pharmaceutical services, there is no choice of either services or persons on the pharmaceutical list in the neighbourhood. This is a fact which the regulations, by use of the imperative words “shall” and “in particular” command the PCT to take especial note. The applicant emphasises that is the Regulations not the Guidance.
- 3.28 Finally in this section, The revised Guidance page 19, paragraph 15 states that *“clearer emphasis has now been placed within the Regulations in promoting more*

*choice for people in order to promote more competition” and paragraph 14 “the overall objective is to determine an application in relation to the overall effect it will have on access to services to patients and not the overall effect it will have on other contractors”.*

- 3.29 The overall effect of granting this company’s application would undoubtedly and indisputedly be to dramatically improve the access of patients to pharmaceutical services provided by persons on the pharmaceutical list within the neighbourhood as there are no services being provided from within the neighbourhood because there are no persons on the pharmaceutical list to provide them.
- 3.30 In refusing the application the PCT have inexplicably ignored the Regulations and have denied patients in the Little Waltham neighbourhood the choice of either service provision or persons on the pharmaceutical list to provide them.

#### LOWER RURAL STANDARDS OF THE PCT

- 3.31 The company has briefly mentioned this earlier but by accepting that its rural patients should have to find their way by an inadequate public transport system to a distant pharmacy, in no matter what state of health they may be, for pharmaceutical services of any kind the PCT is *de facto* accepting a lower standard of service provision than that of urban neighbourhoods within its effective area. Yet, in urban areas it is not unusual to see three or four pharmacies within yards of each other on the same High Street.
- 3.32 This company, as readers of the application will have seen, believes in high standards and submitted its application in order to remedy the present unwelcome situation.

#### OVER THE COUNTER MEDICINES

- 3.33 In its letter of refusal the PCT draws especial attention to “pharmaceutical services other than dispensing e.g. access to OTC’s were being provided by pharmacies outside the neighbourhood”.
- 3.34 The applicant would point out to the PCT that OTC provision is not an NHS pharmaceutical service within the remit of the PCT and that there are far more important real (the advanced and enhanced services) pharmaceutical services which are not being provided by pharmacies outside the neighbourhood but which this company will provide. The applicant set them out on pages 5 - 17 of their application. The PCT does not refer to them.

#### BROOMFIELD GRANGE NURSING HOME

- 3.35 The Company is not certain what point the PCT is making when it mentions the Broomfield Grange Nursing Home. If it is saying that like the Broomfield Grange patients, Little Waltham patients can travel to Chelmsford for their prescriptions, then the PCT logic is flawed. Nursing Homes arrange for their prescriptions to be collected all together for the pharmacist on one day, to be returned another. Life is not like that in a rural area for individual patients.

#### THE LACK OF COMPLAINTS

- 3.36 The lack of complaints from Little Waltham patients about the provision of medicines says a lot about the dispensing practice which provides them. The lack of complaints about the non-provision of pharmaceutical services in Little Waltham is most probably due to the undoubted fact that these patients have no idea, as they have not been told, even by the PCT, what other services could be available to them from a first rate pharmacy such as the applicant’s would be.

- 3.37 In addition to that, as a report from the National Audit Office said in October 2008, few patients complain about the NHS, In fact, in 2007 just 5 percent of dissatisfied patients complained. The remaining 95% of dissatisfied patients who did not complain gave as their reasons that they thought nothing would be done or that they would be branded troublemakers.
- 3.38 So far as complaints regarding the lack of pharmaceutical services in the Little Waltham neighbourhood is concerned, they would be right. Nothing would be done, as the applicant now knows, because the Mid-Essex PCT has turned down their application to provide pharmaceutical services in the village. That patients actually want those services is beyond dispute as evidenced by the letter from the Little Waltham Parish Council.
- 3.39 In any case, to whom would patients complain? They would have to be really angry to trouble to find the PCTs address to write a letter.

#### UNDUE DELAY

- 3.40 As the applicant has highlighted throughout this Appeal, they submitted their application in July 2008 and received the PCT decision in November 2009. By any standard, that is dilatory and inexcusable. It also transgresses the regulations (Guidance, page 47, paragraph 66 and regulation 27(1)) which suggest that an application should have been considered within 4 months, not the 16 or 17 months this PCT took.
- 3.41 In their defence, the company understands that the PCT's "good reason" for the excess 12 months, one year, no less, was taken up by the PCT in considering rurality issues. There is no excuse for this inordinate length of time taken to reach a decision especially as the PCT has offered no apology nor set out substantive reasoning for their delay.

#### CONCLUSION

- 3.42 The company believes that in the above Appeal it has given good reasons why the decision of the PCT to refuse its application should be reversed.
- 3.43 As the applicant has demonstrated both here and in their original application, pharmaceutical service provision presently provided within the neighbourhood is not adequate and there is no choice of service provider within the neighbourhood.
- 3.44 It is therefore necessary for these services to be provided and expedient that the application by Village Primary Care services Ltd to provide those services should be granted, the company having passed the section 12 "necessary or expedient/desirable" test.
- 3.45 Therefore, the applicant respectfully request that the Appeal Body reverses the decision of the Mid Essex PCT not to grant the company's application to provide pharmaceutical services in the neighbourhood around Brook Hill, Little Waltham, Essex.

#### 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 LITTLE WALTHAM PARISH COUNCIL

- 4.1.1 Little Waltham Parish Council supported the original application and wishes to support the applicant's appeal against this refusal.
- 4.1.2 The parish is certainly not adequately served by pharmacies. Additionally, public transport provision from and to Little Waltham is very poor.
- 4.1.3 Most importantly, Little Waltham has a very different demographic mix compared with neighbouring parishes. Compared with nearby Springfield Parish (which does have a pharmacy), Little Waltham has double the proportion of Over-45s (51.8% vs 25.9%), and 2.5 times as many pensioner households (28.4% vs 11.4%).
- 4.1.4 A pharmacy in the parish would greatly assist local residents, and the Council hope that the Appeal Unit will grant the appeal.

#### 4.2 NORTH & SOUTH ESSEX LMCS LTD

- 4.2.1 The LMC remains of the opinion that the proposed pharmacy will offer a range of pharmaceutical services that are currently not easily accessible to the residents of Little Waltham and the surrounding villages. Furthermore, the LMC consider that the local community would benefit from having a pharmacy located within the GP practice.
- 4.2.2 The LMC do not believe that the existing pharmaceutical contractors would be adversely affected if the application were granted.

#### 4.3 MID ESSEX PCT

- 4.3.1 Little Waltham Parish is part of the Borough of Chelmsford, and is a highly sought-after location for home buyers.
- 4.3.2 The parish wraps around the north and east of the urban area, being separated from it by some fields and a golf course. The majority of the residents live in the main village, Little Waltham, which includes a sizeable conservation area and is set in the attractive valley of the River Chelmer. The Parish also comprises the hamlet of Chatham Green off the A1 31 Braintree Road and a tract of countryside with some scattered housing and farms. The parish covers an area of about 1200 hectares (about 5 square miles) and has around 600 households, with a total population in the region of 1300. The number of residents from the Exeter System is 1,466.
- 4.3.3 The village has a GP surgery which provides dispensing services to those patients living in the rural area. The GP surgery has been longstanding within Little Waltham, However following the development of Great Notley Garden Village around 1996, the surgery established a 'branch' surgery in newly constructed premises in Great Notley Garden Village. This surgery is unusual in that the 'main' surgery, which is located within Little Waltham Village, provides medical services to a small proportion of the 16,000 patients registered with the practice, with the majority of patients being resident within Great Notley Garden Village. Based on Exeter data only 9% of patients registered with the surgery actually live in the parish of Little Waltham, assuming that all those living in the parish are registered with this practice.

#### Rurality

- 4.3.4 As a result of this application it was necessary to undertake a rurality review and the Appeal Panel will be in receipt of the report from this review. It is

regrettable that there was a delay in undertaking the rurality review. A timeline is attached.

- 4.3.5 Prior to this application the PCT had undertaken a boundary review of the urban area of Chelmsford, and as a result of this previous review part of Little Waltham Parish immediately surrounding Broomfield Hospital was affected and patients residing in this area were gradualised to receive their pharmaceutical services from community pharmacies within Chelmsford.
- 4.3.6 The PCT panel determined that the Parish of Little Waltham was 'controlled' under the Pharmaceutical Services Regulations 2005. The applicant does not dispute this.

#### Neighbourhood/Reserved Location

- 4.3.7 The PCT accepted the neighbourhood as that recommended by FHS and determined that this would be declared a reserved location under Regulation 35. The applicant does not dispute the neighbourhood agreed by the PCT or the designation as a reserved location.

#### Adequacy

- 4.3.8 The PCT considered the adequacy of pharmaceutical services within the neighbourhood. The PCT are not aware of any planned developments within the neighbourhood which could result in a change to the needs of the population.
- 4.3.9 There are no community pharmacies in the neighbourhood and therefore pharmaceutical services for residents of the neighbourhood (aside from those provided by the practice itself), can only be provided by community pharmacies outside it. There are three community pharmacies within 2.5 miles of the village centre, and one hospital pharmacy located within Broomfield Hospital which is 2 miles from the village.
- 4.3.10 The hospital pharmacy is registered with the Royal Pharmaceutical Society of Great Britain and provides pharmaceutical advice and over-the-counter medicines to the general public but does not hold an NHS dispensing contract under the Pharmaceutical Services Regulations 2005.
- 4.3.11 The surgery is a dispensing practice and pharmaceutical services (dispensing of NHS prescriptions) are available for eligible patients living in the neighbourhood.
- 4.3.12 Analysis of dispensing data demonstrates that patients registered with the Little Waltham and Great Notley Surgery are accessing their pharmaceutical services from 17 community pharmacies with a Chelmsford postal address, with the majority being from three of these pharmacies, two being the nearest pharmacies geographically to the Little Waltham surgery, and the third being in the centre of Chelmsford and reflecting the dispensing being undertaken for Broomfield Grange Care Home (residents of this Care home are registered with Little Waltham surgery but the care home is not geographically located in the neighbourhood under consideration). Since the practice has two surgeries it is not possible to be definitive about where patients living within the neighbourhood and registered with the practice are obtaining their medicines, and therefore the assumption was made that those accessing pharmacies in the Chelmsford area are more likely to be those actually living within the neighbourhood. The majority of items are dispensed by the practice itself, but again it is not possible to distinguish between those dispensed by the Little

Waltham surgery as opposed to those dispensed by the Great Notley surgery. Assuming that same % of items dispensed as patients living in the neighbourhood, estimate that around 1000 items per month are dispensed by the surgery for patients living in the neighbourhood.

- 4.3.13 Opening hours of the existing community pharmacies closest to the neighbourhood provide services 6 days a week (9am until 6/6.30pm Mon-Friday and Saturday 9am until 1-core/4pm supplementary). The hospital pharmacy at Broomfield Hospital is open 7 days a week, 8am until 6pm Mon-Fridays and 10am until 4pm including all Bank Holidays except Christmas Day. Dispensing data analysis demonstrated that a reasonable number of patients were accessing pharmaceutical services from the 100 hour pharmacy located at Sainsbury's Supermarket in White Hart Lane. This pharmacy provides extended access to pharmaceutical services for all the population of North Chelmsford and it's immediate environs, and is open 7am until 11pm Mon-Fri; 7am until 10pm Saturdays and 10am until 4pm on Sundays. The core hours of opening proposed by the applicant does not increase access as these are within existing opening hours for community pharmacies, but supplementary hours do provide earlier opening weekdays (at 8am) and opening on Saturday between 8.30am and 2pm.
- 4.3.14 The panel also considered whether physical access to these community pharmacies was straightforward. Based on the 2001 census, approx. 65% of residents of the neighbourhood are between 18 and 64, with approx 20% (263 people) older than this. Of the 543 households in the parish, only 82 households did not have a car or a van (15.10%), with the majority (63.04%) of households having two cars or more. 66.93% of the population travel to work by car and travel an average of 11.92 miles.
- 4.3.15 The facilities within the village of Little Waltham are very limited and residents need to leave the village to do their routine shopping as there is no local grocery store. The nearest grocery stores are located in Broomfield Parade, adjacent to one of the nearest community pharmacies, or in North Springfield, once again co-located with community pharmacies. Alternatively residents may access nearby large superstores, either Morrisons in Newland Spring (co-located with a community pharmacy), or Sainsbury's in Springfield which includes a community pharmacy.
- 4.3.16 As part of the recent gradualisation following the Chelmsford boundary change, the panel considered several hardship applications from Little Waltham registered patients for continuation of dispensing by the surgery. The PCT did not consider any of the applications to meet the criteria for hardship, with the majority indicating that they had access to a car for their routine shopping. Prior to the consideration of the hardship cases, the PCT sought information from pharmacies within reasonable distance from Little Waltham surgery regarding the availability of collection and delivery services. Of the 7 community pharmacies consulted, all indicated that they provided a collection and delivery service and would deliver to patients in Little Waltham parish.
- 4.3.17 The panel considered the availability of public transport. The 70/70X service provides a direct and regular service at least every 30 minutes, and more often on school days, between the GP surgery (located in the centre of the village) and the community pharmacy on Broomfield Parade, a journey time of around 15 minutes. This service also calls in at Broomfield Hospital should a patient just require over the counter medicines or advice. Access to the pharmacy in North Springfield is possible by bus leaving every 30 minutes, but takes about an hour and involves two bus journeys (70 and 54). Alternatively patients could choose to access community pharmacies located

in the centre of Braintree by using a direct bus route (70) leaving Little Waltham at least every 30 minutes and taking 35 minutes. It is unlikely that residents will choose these longer bus journeys to a pharmacy if they can access a more local one in Broomfield.

- 4.3.18 The PCT accepted that it was too far from the neighbourhood to the pharmacies in adjoining neighbourhoods for it to be reasonable to expect residents to walk. However the neighbourhood was not a town, or part of a town, and residents routinely have to leave the neighbourhood as part of their activities of daily living and therefore the panel considered that accessibility of the neighbouring pharmacies was adequate in all the circumstances.
- 4.3.19 The PCT considered the availability of directed services for residents of Little Waltham. Medicine Use Reviews (MUR) are available from all community pharmacies used by patients from the surgery. The Surgery itself participates in the Dispensing Quality Scheme and undertakes Drug Usage Medication Reviews (DRUMs) for dispensing patients.
- 4.3.20 The PCT commissions a fairly limited range of enhanced services from nominated pharmacies, namely Sexual Health Services, Smoking Cessation, Supervised Methadone, Needle Exchange, Availability of Palliative Care medicines and Minor Ailments scheme for low income families. Commissioning of enhanced services is based on need and therefore are not necessarily commissioned from all community pharmacies. The pharmacy located in Broomfield Parade is commissioned to provide sexual health services and smoking cessation services, and the pharmacy in North Springfield commissioned to provide access to palliative care medicines.
- 4.3.21 The PNA (2007) does not identify any particular needs for residents within Little Waltham parish, but did generally identify the need to provide more robust access to Emergency Hormonal Contraception across the PCT. The PCT has addressed this need through an alternative contracting model for Sexual Health Services which requires the provision of EHC at all times that a commissioned pharmacy is open. This has increased the access to EHC, particularly since all 100 hour pharmacies are required to provide this service. The PCT is aware that activity re EHC is greater in larger community pharmacies since this gives patients a greater anonymity than can be provided in a more local pharmacy, particularly where these are co-located with GP surgeries.
- 4.3.22 The panel considered whether there was any evidence of inadequacy of pharmaceutical services to the neighbourhood. There have been no PCT contract monitoring reports expressing concern regarding adequacy of pharmaceutical services, or reports in the media or any inadequacy identified within the Pharmaceutical Needs Assessment.

#### Choice

- 4.3.23 PCTs are required to consider whether recipients of pharmaceutical services already have a reasonable choice with regard to services provided and pharmacies from which to receive those services.
- 4.3.24 Whilst recognising that there are no pharmacies geographically located within the neighbourhood, it is clear from the range of community pharmacies undertaking dispensing services for patients of the surgery, that patients have choice as to where they can access their pharmaceutical services.

- 4.3.25 The PCT recognises that for patients without access to a vehicle, only one pharmacy is easily accessible using public transport. However patients do have access to internet pharmacies as an alternative.
- 4.3.26 Having had a full discussion and taking into account all information provided, the panel concluded that to grant this application was neither necessary or expedient. The PCT therefore asks that the Litigation Authority dismisses this appeal.

#### 4.4 ESSEX LPC

- 4.4.1 The Committee have reviewed the submissions made for this appeal and the original decision reached by the Mid Essex Pharmacy Services Sub Committee. The LPC were in full agreement with the decision reached by the PCT.
- 4.4.2 The LPC note that this area is designated as a reserved location and that the FCT has determined the population to be 2076, thereby making the prejudice test inapplicable.
- 4.4.3 In practical terms the majority of the population will be receiving a full GMS service and core dispensing services from the dispensing practice. Therefore, the number of additional patients requiring dispensing services will be very small. The LPC's experience would question the financial viability of a full pharmacy for such a small population, although the LPC understand that determinations cannot be made on this aspect. It is, however, to protect patients in such localities that reserved locations were introduced.
- 4.4.4 Patients requiring additional pharmaceutical services can access them from adjoining neighbourhoods where they are available. As noted in the LPC's original submission and that in the determination by the PCT there have been no complaints as to the adequacy of current service provision. Additional services can be accessed in adjoining neighbourhoods in conjunction with other day to day activities.
- 4.4.5 The Committee would therefore like to reiterate that this is a reserved location where core dispensing services are already provided, and that additional pharmaceutical services can be accessed from adjoining neighbourhoods in association with patients' regular day to day activities, for which there have been no complaints. The LPC therefore feel this application does not pass the necessary and expedient test and so should be rejected.

#### 4.5 MR PATTIANI OF THE PHARMACY, 1 CLEMATIS TYE

- 4.5.1 The appellant has produced very little supporting evidence to refute the PCT's original determination.
- 4.5.2 The Appeal Unit should be mindful of the following when considering the appeal against the PCT decision: The neighbourhood is a designated 'reserve' location.
- 4.5.3 The GP practice is a dispensing practice providing full pharmaceutical services for their dispensing patients. Bulk of the practice patients fall within this category.
- 4.5.4 The Practice under their GMS contract will be providing directed enhanced services including contraception, chlamydia testing, smoking cessation, C-Card etc to all their patients including the non dispensing patients.

- 4.5.5 During the recent gradualisation exercise all applications for hardship by patients of this practice were refused by the PCT due to adequate provision by Chelmsford Pharmacies including collection and delivery service and repeat dispensing.
- 4.5.6 The Mid Essex PNA (Pharmacy Needs Assessment) has identified no gaps in the service.
- 4.5.7 The rurality visit report clearly identified the ability of the Little Waltham patients to access other essential services like banking, postal and shopping from the surrounding neighbourhoods. This was not appealed against by the appellant's practice.
- 4.5.8 The appellant in declaring his core hours, has made their intentions of not guaranteeing Saturday/Sunday and after 5.00PM provision when the commuter population of Little Waltham would most need the service.
- 4.5.9 The provision of palliative care services have been carefully rationed by the PCT in Chelmsford (including two 100 hour pharmacies). There is adequate provision which is strictly monitored by the PCT.
- 4.5.10 If the appellant's wish is to provide sale of medicines, they can always register a non contract pharmacy.
- 4.5.11 If appellant's wish is to provide dispensing for the small number of non dispensing patients, then they have produced no evidence of hardship or inadequacy for their non dispensing patients. In the present monetary climate this would be totally cost effective for the NHS.
- 4.5.12 If the appellant were to relinquish their doctor dispensing contract, granting of a pharmacy contract would be totally acceptable. However the practice will have to accord all their patients free choice, of where they wish to obtain their pharmaceutical needs,
- 4.5.13 In conclusion the appellant has produced no persuasive evidence against the PCT decision.
- 4.5.14 Mr Pattiani urges the Litigation Authority to decline this appeal.

## 5 Unsolicited comments

### 5.1 BROOMFIELD PARISH COUNCIL

- 5.1.1 Broomfield Parish Council is very disappointed that Little Waltham Doctors Surgery's have been refused permission to open a pharmacy. The parish of Broomfield does not have the benefit of having a Doctors' surgery nor does it have a pharmacy so therefore many parishioners use the Little Waltham surgery. The Council also understands that recently many Broomfield residents have lost the right to have their medicines dispensed at the surgery which is causing great inconvenience. This means that residents have to travel a couple of miles or more to visit a Doctor, then travel up to 4/5 miles (often past their own homes) to Broomfield Parade in Chelmsford where there is insufficient parking to enable them to obtain their prescriptions.
- 5.1.2 There are also plans in Chelmsford Borough Council's North Chelmsford Area Action Plan to provide a two General Practitioner Surgery in the proposed development between Hospital Approach and Woodhouse Lane - but there are no plans to provide a pharmacy at this location only a convenient store.

- 5.1.3 Please could the Appeal Unit re-consider the decision to enable the Little Waltham Doctors' Surgery to provide a much needed service to Broomfield residents?

## 5.2 ESSEX COUNTY COUNCIL

- 5.2.1 The Great Waltham Parish Council has written to the County Council expressing concern that the application to maintain a pharmacy at the Surgery in nearby Little Waltham has been refused.
- 5.2.2 The Parish Council's letter sets out a cogent case why the pharmacy should be permitted in order that it may cater for a significant number of residents in the locality that would otherwise have to travel to the nearest town Chelmsford to obtain prescriptions / advice.
- 5.2.3 The County Council find the decision taken by the Mid Essex PCT strange and inconsistent in that it has, in the recent past, accepted pharmacies located in surgeries in similarly sized villages in the PCT area (e.g. The Writtle Surgery, Lordship Road, Writtle). Unlike Writtle there is no Chemist local to either Gt or Lt Waltham set up to provide pharmaceutical services and thus the Lt Waltham Surgery could provide a much needed medical facility for over 3000 people in both villages.
- 5.2.4 As the representative for all those people, who live in this predominantly rural area, the County Council would request that the Appeal Unit give sympathetic consideration to the application with a view to approval.

## 5.3 GREAT WALTHAM PARISH COUNCIL

- 5.3.1 It is understood by the Great Waltham Parish Council that the application to operate a pharmacy from the Surgery at, 30 Brook Hill, Little Waltham has been refused by the Primary Care Trust and is now subject of appeal to the Appeal Unit.
- 5.3.2 Great Waltham Parish Council very much supports the application for a pharmacy to be operated from the surgery for the following reasons:
- 5.3.3 Great Waltham Parish (the second largest in Essex) is a large rural Parish and has a population of 2,100 parishioners who do not have access within the Parish to pharmacy facilities. The Parish includes three small villages and five rural hamlets, many of which have no services at all.
- 5.3.4 Parts of the parish, but not all parts are served by 15 - 20 bus services per weekday which could take passengers to pharmacies in Broomfield and Chelmsford 4 - 5 miles away or to Great Dunmow – 4 - 8 miles away.
- 5.3.5 To have a pharmacy at the surgery will allow parishioners to purchase 'over the counter' drugs locally.
- 5.3.6 To have a pharmacy at the surgery will allow parishioners to consult a pharmacist rather than take up valuable appointments with doctor's or nurses, thereby saving appointments for more urgent consultations.
- 5.3.7 It will reduce vehicle journeys made by parishioners to pharmacies which are further afield in line with the governments initiatives on carbon emission reduction.

- 5.3.8 It will provide a 'rounded' service provision from the Little Waltham Surgery giving more medical facilities to the parishioners of Great Waltham.
- 5.3.9 The Local Planning Authority (Chelmsford Borough Council) has approved a planning application for modification of the surgery to accommodate a pharmacy. In approving the application it was commented 'Presently there are no pharmacies within Little Waltham and it is considered that there is an acceptable provision of off-street parking elsewhere and the formation of a pharmacy may enable a reduction in trip rates as patients may no longer have to drive to Chelmsford and other locations to both collect and file their prescriptions'.
- 5.3.10 Great Waltham Parish Council does not accept the reasons that the Primary Care Trust has refused the application as is clearly demonstrated by the facts stated above which demonstrated a clear requirement for a pharmacy to operate alongside the other medical facilities provided at the site..
- 5.3.11 The Parish Council therefore urges the NHS Litigation Authority to give full consideration to the facts given within and ask the Authority to overrule the refusal of the application.

## **6 Further unsolicited comments**

### **6.1 CHELMSFORD BOROUGH COUNCIL**

- 6.1.1 Chelmsford Borough Council has been approached by a number of residents in this Ward in addition to the Parish Councils of Broomfield, Great Waltham & Little Waltham. The Little Waltham Surgery at the above address has served residents of the north rural area of the Chelmsford Borough for a great many years. Indeed this is the only surgery in the Villages concerned, even though Broomfield plays host to new PA general hospital.
- 6.1.2 In addition to a lack of GP services in the Villages there is also a lack of pharmaceutical services which makes the decision of the Mid-Essex PCT to deny such services at the Surgery to serve this rural population. It must be assumed that it is considered appropriate for elderly patients to undertake a journey by public bus (where such serves the community) or taxi to the surgery - often a journey of some miles - and then a further journey of at least four/five miles by similar means to a pharmacy and then return by the same means. In total if public bus services are used such a journey could take the best part of a day as services to the more rural parts of Great & Little Waltham are often a hourly (or more) service.
- 6.1.3 A decision denying satisfactory pharmaceutical services to these rural communities is tantamount to a public disgrace and a denial of treatment to those who are most often in a position of frailty and need.
- 6.1.4 Chelmsford Borough Council would urge the Authority to overturn the decision of the PCT and take due note of the submissions before them from the residents and Parish Councils concerned.

## **7 Consideration**

- 7.1 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.

- 7.2 It also had before it the responses to the Authority's own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 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").
- 7.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 7.6 The Committee noted that the application is in a controlled locality which has also been determined a reserved location. The population in the neighbourhood who are included on dispensing doctors lists will be able to continue to receive dispensing from their dispensing doctor or from a pharmacy.
- 7.7 The Committee noted that although the applicant had proposed an alternative neighbourhood comprising a 1.5 mile radius from the proposed site, they did not seek to dispute the PCT neighbourhood on appeal. The Committee was of the view that the PCT definition appeared to be based on more appropriate boundaries and, given the lack of dispute, was content to accept that neighbourhood without prejudice to any future applications.
- 7.8 The Committee noted that 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.
- 7.9 The Committee noted the locations of the nearest existing pharmacies in the area. Given the rural nature of the area and the limited amenities available, the Committee viewed it as reasonable to assume that residents of Little Waltham would be accustomed to travelling outside the neighbourhood for work or to access amenities at Chelmsford or surrounding villages on a regular basis.
- 7.10 On this basis, the Committee concluded that the application was not necessary and therefore went on to consider whether it could be considered expedient.
- 7.11 The Committee noted the distances to pharmacies in other neighbourhoods and were mindful that residents are unlikely to choose to walk even to the nearest option in Springfield at a distance of 2.8 miles according to the applicant. The Committee noted that statistics had been provided for car ownership and considered there to be a significant proportion of households with no car. For those with cars, the Committee was mindful that such private transport may not be available to all members of the household during the day when pharmaceutical services are required. Having regard to public transport, the Committee noted that the shortest bus journey is 15 minutes duration and runs every half hour. The Committee was not persuaded that this was a reasonable journey for those in need of a pharmacy. The Committee noted the PCTs comment that collection and delivery services are available however did not consider this to be an acceptable alternative to a face-to-face service.
- 7.12 The Committee accepted the population is not large in number however there is a source of NHS prescriptions in Little Waltham and whether or not individuals are dispensing patients, there is no pharmaceutical service (by a pharmacy) conveniently made available to them. The Committee were also mindful that the GP surgery would bring in a visiting population and in assessing adequacy it is the population within the neighbourhood for whatever reason to which the Committee shall have regard.

7.13 The Committee noted the letters of support from the local authorities.

7.14 The Committee concluded, on the basis of the issues examined at 7.11 and 7.12, that weight should be given to the matter of choice such that the totality of the relevant factors create a gap in provision that requires securing to the extent that it is expedient to grant the application.

## 8 **Decision**

Accordingly, the Committee allows the appeal.

### **Abby Richards Appeal Officer**

Private & confidential information has been replaced by XXXX

A copy of this decision is being sent to:

Family Health Services, on behalf of the PCT  
Village Primary Care Services Ltd  
The Pharmacy, 1 Clematis Tye  
Lloyds Pharmacy Ltd  
Boots UK Ltd  
Essex LPC  
North & South Essex LMCs Ltd  
Little Waltham Parish Council