

8<sup>th</sup> December 2009

REF: SHA/15286

**APPEAL AGAINST MIDDLESBROUGH PCT DECISION  
TO REFUSE AN APPLICATION BY MR Z RAFIQ FOR  
PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE  
PHARMACEUTICAL LIST AT THE OVAL, BROOKFIELD,  
MIDDLESBROUGH TS5 8HP**

**1 Preliminary Consideration**

- 1.1 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. It also had before it the responses to the Authority’s own statutory consultation.
- 1.2 The Committee was of the view that an Oral Hearing should be held before the appeal was determined.

**2 Oral Hearing**

- 2.1 An Oral Hearing was therefore held on 3<sup>rd</sup> November 2009 at Poole House, Stokesley Road, Nunthorpe, Middlesbrough TS7 0NJ.
- 2.2 A copy of the Oral Hearing report is attached.

**3 Further Consideration by the Committee**

- 3.1 Each member of the Committee had read the Oral Hearing report in full which was considered together with all the other documents previously referred to.
- 3.2 The Committee had regard to Regulation 12(1), the necessary or desirable test, and in considering that test, had regard in particular to 12(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) (“the Regulations”).
- 3.3 The Committee dealt with the application by way of reconsideration of all the issues.
- 3.4 The Committee noted the Oral Hearing recommendation for the definition of the neighbourhood, made after a site visit. The Committee adopted this definition for the purpose of this application.
- 3.5 On balance, the Committee determined that there was a gap on the spectrum of adequacy sufficiently high to demonstrate that there is a gap in provision and as such the Committee was of the view that the proposed pharmacy was desirable to secure the adequate provision of services in the neighbourhood.
- 3.6 The Committee decided to accept the recommendation from the Oral Hearing Panel for the reasons given in the oral hearing report.

**4 Decision**

Accordingly the Committee allows the appeal.

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

A copy of this decision is being sent to:

Oral Hearing Panel Members  
North East FHSA, on behalf of Middlesbrough PCT  
Charles Russell LLP, on behalf of Mr Z Rafiq  
PJ Wilkinson Chemist  
Boots UK Ltd  
Cleveland LPC