

17 December 2009

REF: 15388

APPEALS AGAINST SEFTON PCT DECISION TO GRANT AN APPLICATION BY MEDICX PHARMACY LIMITED FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE VICINITY OF THE NEW HEALTH CENTRE, TOWN LANE, KEW, SOUTHPORT, PR8

1 The Application

By application dated 18 May 2009, MedicX Pharmacy Limited (“the Applicant”) applied to Sefton Primary Care Trust (“the PCT”) for preliminary consent prior to inclusion in the pharmaceutical list at in the vicinity of the New Health Centre, Town Lane, Kew, Southport, PR8. In support of the application it was stated:

Neighbourhood

- 1.1 For the purpose of this application we define the neighbourhood to be that of Kew. The neighbourhood boundaries are as follows:
 - 1.1.1 North: The extent of the housing
 - 1.1.2 East: Scarisbrook New Road and Southport Road
 - 1.1.3 South: The extent of the housing and Boundary Brook
 - 1.1.4 West: Birkdale Cop and the Un-named track
- 1.2 It will be noted that in the neighbourhood defined there is a fairly dense area of established development plus an area of clear space. This has been designated by the council for future development and it is proposed that just under 700 new homes (some privately owned, some affordable housing) in addition to business park accommodation is constructed in this area. For Sefton Council, this area of Kew provides the largest potential site for new housing and therefore its importance in addressing the shortage of available land for housing is well recognised (see attached notes from council meeting – Appendix A).
- 1.3 The existing housing in Kew was built in the 1980s and is now well established with a thriving community. Like most areas in Southport it has attracted a significant elderly population, as evidenced by the large number of bungalows but also many families who live in the larger three and four bedroom houses on the estate. The existing population of the neighbourhood is approximately 3,500 but the construction of almost 700 new homes will see the population increase by approximately 1,500 - 2,000 people.
- 1.4 Within the east of the neighbourhood there is also an extremely popular retail area which contains two retail parks: Kew Retail Park and Meols Cop Retail Park which contain a large number of national retail park retailers such as B&Q, Carpet Right, JJB Sport etc there is also a 24 hour Tesco Extra and a McDonalds. Not only do these outlets provide services for Kew but the wider population of Southport and beyond.

- 1.5 Our proposed site is within the immediate vicinity of the new health centre being built on Town Lane for Dr Halina Obuchowicz who currently treats Kew patients in a portable cabin in The Pageant pub car park, Folkestone Road.
- 1.6 Southport and Formby District General Hospital (including Adult Accident and Emergency) is located very close to the new health centre and will attract patients from all over Southport and Formby, thus adding to the visiting population and the overall healthcare needs in this neighbourhood.

Adequacy of existing services

- 1.7 There is one pharmacy within the neighbourhood as defined within the Tesco store. This pharmacy provides an extended hour service and has plentiful car parking. However it is our contention that pharmaceutical services for the neighbourhood in its entirety are not wholly adequate.
- 1.8 It is 903m (measured with a surveyor's wheel) from the entrance of the construction site where the new health centre build is underway to the customer exit of the Tesco store. The entrance to the Tesco store is approximately another 50m further and the pharmacy unit is located at the very back of the Tesco store adding at least another 50m to the journey making the total distance in excess of 1km. Whilst the terrain is flat, for an elderly person or a mother with a young child in a pushchair this distance alone could render access extremely difficult. For a relatively fit and healthy person the walk would take approximately 15 minutes but this would be notably increased for these patients.
- 1.9 There are also some difficult roads to cross once reaching the end of Town Lane with its junction with Folkestone Road. A pedestrian would firstly have to cross one single carriage way plus a dual carriage way to traverse Town Lane then another single carriage way and a dual carriage way to cross Folkestone Road. Neither of these roads have pedestrian lights or zebra crossings to facilitate safe crossing and both carry significant amounts of traffic making crossing difficult and dangerous.
- 1.10 For car-borne patients, whilst Tesco affords a large car park the volume of traffic using the road network near to the store creates problems. These problems are further exacerbated by people travelling by car to the adjacent retail parks. The traffic roundabouts are seldom quiet making journey times longer and more difficult.
- 1.11 For particularly the elderly or a patient suffering an acute illness, a journey to the pharmacy within the extremely busy Tesco store could be a daunting and undesirable task to endure.
- 1.12 There is another pharmacy in an adjacent neighbourhood, on the corner of Southbank Road. This pharmacy is a similar distance away from our proposed site as Tesco's. This neighbourhood is very different in character to Kew and is not likely to attract the residents of Kew as part of the fabric of their every day lives.

Services to be provided

- 1.13 MedicX Pharmacy is fully aligned with proposals in the "Pharmacy White Paper" for pharmacies to become Healthy Living Centres.
- 1.14 Our pharmacies are designed to provide a wide range of health promotional material easily accessible to patients via digital or print media. Our waiting areas also act as health promotion areas with LCD screens, touch-screen information points, innovative leaflet display areas / poster boards etc.
- 1.15 Our team members are encouraged to sign post patients to appropriate services provided in-pharmacy and / or other health or social care providers.

- 1.16 Every MedicX Pharmacy has / will have a minimum of two consultation rooms, ideally three to allow us to focus on the provision of professional healthcare services. The availability of more than one consultation room gives us greater flexibility and allows us to provide an extremely wide range of services to a large number of people as there are fewer limitations on the demands of the consultation space.
- 1.17 We have developed our own Healthy Lifestyle Assessment because we believe that pharmacies are not only places people should visit when they are ill but places they visit to help them remain healthy and offer support to change elements of their lifestyle which could decrease the risk of developing a long term illness in the future. This is a simple lifestyle questionnaire which prioritises areas of the patient's lifestyle needing to be addressed and then a discussion between the pharmacist and patient as to simple steps for change.
- 1.18 We note that Sefton PCT's Pharmaceutical Needs Assessment is considered to be out of date however MedicX Pharmacy will provide any service the PCT wish to commission. The availability of at least two consultation rooms allows such services to take place. We will also work with other healthcare professionals so that they can provide their services from within our pharmacy. This has worked exceptionally well in Chorley where a trained smoking cessation counsellor provides a stop smoking service from our pharmacy for three sessions a week. This improves accessibility to this service and is well used by the local population. The service on a Saturday morning focuses on pregnant women referred to the stop smoking service and is extremely popular.
- 1.19 Of particular importance in this neighbourhood will be services to the elderly and families.
- 1.20 In common with the rest of England, the population of Southport is ageing and the over 85s group is one of the fastest growing groups. Southport is also traditionally a retirement area and therefore already has a higher proportion of elderly residents than the UK average further necessitating specific services for the elderly.
- 1.21 Within this group there will be a significant number of elderly and housebound living alone and therefore domiciliary services are of great importance. These people are also more likely to be suffering from at least one long term condition and receiving regular repeat medication. MedicX Pharmacy will liaise with the patient, carer and GP to determine the most appropriate methods of re-ordering prescriptions and collection / delivery of medicines.
- 1.22 MedicX Pharmacy will order repeat medicines on the patient's behalf if this is deemed most appropriate or will simply collect the prescription from the patient's surgery if this is the chosen method. We believe that allowing patients to have control over their medicines to maintain a level of independence is important if that is the individual's preference and safe to do so with support given by the pharmacist as required.
- 1.23 We are then able to offer a delivery service if required however it must be remembered that for some people a trip to the health centre will be seen as a social outing and an opportunity to leave the home and this should be encouraged. For those wishing to have their medicines delivered a dedicated delivery service will be available.
- 1.24 We propose to provide home deliveries between 4pm and 7pm. In our experience more people (including the elderly who may attend day care centres or venture on local trips) tend to be at home during these hours and able to take receipt of deliveries.
- 1.25 Our flexible options give patients the choice of how to order their prescriptions and receive their medication rather than having a one-size-fits-all service.

- 1.26 MedicX Pharmacy will (with PCT approval) also provide domiciliary visits to housebound patients to undertake medicines use reviews (MURs) to ensure medicine compliance. For elderly patients or those taking multiple medicines MURs are of particular importance to reduce the risk of overdose and/or non-compliant medicine consumption resulting in side effects and an increased risk of falls.
- 1.27 We will also provide community dosage trays or cassettes where this is deemed appropriate to facilitate the correct taking of medicines.
- 1.28 Many elderly or housebound patients living in their own homes will be cared for by a relative or organised carer. MedicX Pharmacy will build links with social service care providers and provide education and training on various elements of medicine use such as synchronisation of prescriptions and medicine storage and also the services MedicX Pharmacy can provide including domiciliary visits, use of community dosage aids and support services for long term conditions.
- 1.29 MedicX Pharmacy believes that healthy lifestyle education should begin at an early age and would be keen to work with school nurses to raise awareness in schools about public health issues such as obesity, smoking and teenage pregnancy.
- 1.30 Children often suffer from acute conditions such as conjunctivitis, impetigo, head lice etc and, if commissioned by the PCT from MedicX Pharmacy, a minor ailments service would prove invaluable for these conditions. MedicX Pharmacy would produce patient information leaflets on this service to be given out in schools.
- 1.31 Key awareness campaigns for teenagers revolve around sexual health services, alcohol and smoking. Again we would work with other professionals in Southport to raise awareness of the issues and an integrated approach to screening and treatment of disease such as Chlamydia and family planning, particularly the supply of emergency hormonal contraception and free condoms.
- 1.32 We would also provide a smoking cessation service in collaboration with other key workers for use by teenagers at the PCTs request.
- 1.33 We conclude therefore that the existing provision of services is not wholly adequate for the population of Kew, whether that is existing residents, visitors and the potential new resident population.
- 1.34 For these reasons we believe that this application is, at the very least, desirable to secure the adequate provision of services in Kew.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter dated 3 September 2009 states:

- 2.1 I refer to your application for inclusion in the Sefton PCT Pharmaceutical list for proposed premises at Town Lane, Kew, Southport.
- 2.2 It has been decided that your application should be approved.
- 2.3 Having considered this application the committee decided to approve the above named application on the basis of desirability.
- 2.4 In considering the neighbourhood, the Committee referred to the neighbourhood as Fine Jane's Brook to Meols Cop Road, along Boundary Road to Birkdale Cop Road, and along Town Lane Kew to Fine Jane Brook.

3 The Appeals

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”) undated but received on 21 September 2009, Bispham Road Pharmacy appealed against the PCT’s decision. The grounds of appeal are:

- 3.1 I wish to appeal against the decision by Sefton PCT to approve the application at the above premises.
- 3.2 There are several critical areas of importance with regard to this application:
 - 3.2.1 The neighbourhood defined by the Committee.
 - 3.2.2 The interpretation of desirability for the neighbourhood.
 - 3.2.3 The Committee deeming non essential services as an excuse for granting the contract.
 - 3.2.4 The Application has been allowed due to the financial pressures on the PCT regarding the Health Centre.
- 3.3 Please refer to attached maps (Appendix B). The area defined as the neighbourhood for this application is particularly strange for a supposedly professionally directed committee. The neighbourhood they have defined is basically the same neighbourhood that Tesco Pharmacy serves, with the addition of the land bordered by Scarisbrick New Road/Fine Janes Brook and Town Lane. In other words, land upon which there is virtually no residential property, as it houses Southport District General Hospital. The only reason this extra section has been added, is that if it wasn't, it would not appear in the neighbourhood it claims it wants to serve, it would be on the boundary of the neighbourhood of the Kew estate. The neighbourhood of the Kew estate would be defined as the area enclosed by Town Lane/Birkdale Cop Road/Boundary Brook/Southport Road back to Town lane in front of hospital. Tesco Pharmacy is within this boundary and as there are only 3000 people within this defined neighbourhood, their pharmaceutical needs are being met by this pharmacy and it's 90.5hrs of easily accessed pharmaceutical services. This is compared to the 40hrs of pharmaceutical services being offered by the applicant. This categorically proves the application is neither necessary or desirable.
- 3.4 Another criticism of the Committees decision lies with their interpretation of desirability to the defined neighbourhood. According to the ‘**Control of Entry**’ test, *‘an inclusion in a pharmaceutical list will be granted only if it is necessary or desirable to grant the application in order to secure, in the neighbourhood in which the premises which the applicant intends to provide the services are located, the adequate provision, by persons included in a pharmaceutical list, of the services, or some of the services, specified in the application.’* It is clearly apparent that the Committee have confused desirable to the patients of the new Health Centre, with desirable to the overall neighbourhood. A Health Centres patient list cannot be considered as a neighbourhood, especially when there is only 1 GP based at this Health Centre. Residents of the Kew Estate, who are not registered with this Health Centre, are highly unlikely to visit another GP’s premises to access pharmaceutical services. So whilst it is clear that may be considered desirable for the patients of the Health Centre, the regulations do not accept this argument as the patients are not the neighbourhood.
- 3.5 It would appear that the Committee, in its wisdom, deemed the facts that because Tesco had not objected to the application, that Tesco does not offer EHC (to under 16’s) as company policy and Tesco does not offer a delivery service, sufficient reason to say the application was desirable. EHC and a very limited delivery service are not permissible reasons for the contract to be given as these are non core, non essential services under the new Pharmacy Contract. The fact that Tesco has not appealed the decision is also irrelevant and not permissible as a reason for the contract to be given. **EHC is not one of Sefton PCT’s ‘directed services’**. As a provider of EHC

service, I can say that the number of EHC issued monthly of approximately four, hardly constitutes a large demand for the service and therefore not relevant as a reason for granting the application. There have never been any concerns or complaints to the PCT regarding pharmaceutical services to the Kew estate. By using the fact that Tesco do not deliver or offer EHC is inferring Tesco's pharmaceutical service is inadequate, yet no representations to that effect have been made, either to the PCT or the LPC.

- 3.6 The Application was approved by the PCT Committee as it is normal business practice on these Healthcare developments, for the developer to charge a substantial rent to an attached pharmacy. This premium can also be supplemented by an agreed 'signing on' fee, which recognises the potential of the development to the pharmacy prescription figures and overall profitability. I know from 1st hand experience as I was involved in the development of the Fylde Road Medical Complex, as a partner in the pharmacy that was already in situ. During these financially restricted times, the PCT is reliant on an in situ pharmacy at the Health Centre, to subsidise the rent that would in effect be passed on to the PCT. It therefore asks the question was it ethically and professionally permissible for the PCT Committee to decide upon this application, when it was financially connected to the development and the rejection of a pharmacy contract, that has already been done twice in recent years, would have increased the financial liability on the PCT.

Summary

- 3.7 Residential neighbourhood is identical to that already served by Tesco Pharmacy.
- 3.8 Health Centre patient list cannot be considered as a neighbourhood.
- 3.9 No complaints or concerns have been expressed over current level of pharmaceutical services.
- 3.10 Two recent applications refused by the PCT as neither necessary nor desirable.
- 3.11 Tesco Pharmacy is readily accessible to neighbourhood for a total of 90hrs a week.
- 3.12 Proposed pharmacy to offer only 40hrs per week of pharmaceutical services.
- 3.13 New pedestrian crossing constructed opposite Health Centre to connect it to the Neighbourhood. (see photo, Appendix B) Lack of crossings was an argument for pharmacy at Health Centre.
- 3.14 EHC not a PCT directed service.
- 3.15 EHC and delivery service not classed as essential core services.
- 3.16 Pharmacy would subsidise the rent for Health Centre levied by developer.
- 3.17 No expansion of the estate in recent years.
- 3.18 No planned expansion of the estate due to financial constraints.
- 3.19 I therefore request the Appeal Panel to see this as a PCT financially motivated and approved application. It has no merit. It does not offer anything towards the neighbourhood estate of Kew, which is more than adequately served by Tesco. It is therefore neither necessary nor desirable.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 1 October 2009, Charles Russell on behalf of North Meols Pharmacy Limited appealed against the PCT's decision. The grounds of appeal are:

- 3.20 We act for North Meols Pharmacy Limited. On behalf of our client we write to appeal a decision of Sefton PCT to grant an application by MedicX Pharmacy Limited for preliminary consent prior to inclusion in the PCT's pharmaceutical list for premises in the vicinity of the new health centre, Town Lane, Kew, Southport. The decision was notified to our client by letter dated 3 September 2009.
- 3.21 As a preliminary matter, contrary to regulation 27, the PCT has failed to provide a statement of reasons for its decision to grant this application, simply stating that "it has been decided that the application should be approved". It is therefore impossible to know which of the matters raised by the applicant in its application or which of those raised by interested parties the PCT found to be relevant. The PCT decision is therefore flawed.
- 3.22 Had the PCT properly considered the matters before it, it should have refused the application as being neither necessary nor expedient for the following reasons:

NEIGHBOURHOOD

- 3.23 The neighbourhood put forward by the applicant and apparently accepted by the PCT is different from the neighbourhood as previously defined by the PCT. There has been no development in the neighbourhood which should have caused the PCT to define a different neighbourhood on this occasion to that previously defined.
- 3.24 As the PCT has previously accepted when considering other applications in the area, the neighbourhood is the area bordered by Scarisbrick New Road/Ash Street/Portland Street/Town Lane/open land to the south of Southport. The area to the south of Town Lane Kew (ie the applicant's defined neighbourhood) has always been considered to be part of the same neighbourhood as the area to the north of that road.

POPULATION

- 3.25 The provision of pharmaceutical services should be considered having regard to the population resident in and visiting the neighbourhood.
- 3.26 The neighbourhood (including the neighbourhood as defined by the applicant) comprises principally of affluent, owner occupied housing where residents are highly mobile and in good health. This is evident from information obtained from the National Statistics website. For the neighbourhood as defined by the applicant according to the 2001 census:
- 3.26.1 There are 2,354 residents;
- 3.26.2 Of those, 93% own their home outright or with a mortgage; only 1% rent their home from the local authority;
- 3.26.3 85% of residents own at least one car or van;
- 3.26.4 The proportion of those aged over 60 (24%) and whose health is described as "not good" (9%) are broadly in line with the English average.
- 3.27 Having regard to the census data there is, therefore, nothing to indicate that there are any particular health needs for the resident population which are not currently being met.
- 3.28 The applicant refers to a "new health centre", but in fact this is the construction of small doctor's surgery to house one GP who is already providing general medical services in the neighbourhood. The doctor is currently providing medical services from a temporary structure, although that structure has been in place for at least 4

years. The construction of the doctor's surgery will have no effect on the demand for pharmaceutical services in the neighbourhood.

HOUSING DEVELOPMENTS

- 3.29 The applicant refers to the possibility of houses being built to the southwest of the neighbourhood. However, it is evident from the planning document submitted by the applicant that this is no more than the Council's suggestion that the open land may be suitable for housing: no planning application has been made and, in the current economic situation it must be questionable whether any such development is likely to take place in the foreseeable future, if ever.
- 3.30 In addition, our client understands that the land is in poor condition as it was previously used as a council tip. It needs significant decontamination treatment for which funding is not agreed (the figure of £560,000 mentioned in the papers is the cost of Site Investigation work to identify what work will be required to decontaminate the site. As can be seen from the Council papers submitted by the applicant, agreement cannot even be reached over who will pay for the initial investigation work).

ACCESS TO EXISTING PHARMACIES

- 3.31 There are two pharmacies in the neighbourhood (and one pharmacy in the neighbourhood as defined by the applicant): the pharmacy operated by Tesco (Town Lane, Southport, PR8 5JH) and our client's pharmacy (126 Southbank Road, PR8 6QL). The existing pharmacies offer a wholly adequate provision of pharmaceutical service for the 2,354 residents.
- 3.32 Access to Tesco is easy for all those in the neighbourhood. Indeed, the Tesco store is used regularly by those in the neighbourhood to carry out daily and weekly shopping.
- 3.33 The applicant's reference to access difficulties by foot are greatly exaggerated:
- 3.34 Contrary to the applicant's assertion, the Tesco pharmacy is located only 700m from the proposed site (not the 900 metres stated by the applicant).
- 3.35 The roads referred to by the applicant are minor, residential streets: there are no dual carriageways to be crossed (neither Town Lane nor Folkestone Road are dual carriageways).
- 3.36 Contrary to the applicant's assertion, there are pedestrian crossing facilities on Town Lane outside the hospital site and at the newly constructed GP surgery. Whilst there may be no pedestrian crossing facilities on Folkestone Road, this is because it can be easily and safely crossed without them (as is the case for most residential streets). The majority of traffic entering the Tesco site does so from the east (via Scarisbrick New Road) and causes no hazard to pedestrians from Kew (who would enter Tesco from the west).
- 3.37 By road, the Tesco pharmacy is a short drive for all those in the neighbourhood.
- 3.38 In addition, our client's pharmacy is conveniently located to the north of the neighbourhood and is easily accessible, as are existing pharmacies in adjacent neighbourhoods.

OPENING HOURS

- 3.39 The applicant offers nothing by way of opening hours in addition to those provided by existing pharmacies. The applicant proposes to open from 8.30am to 6.30pm Monday

to Friday (with an hour for lunch) and 9am to 12pm on Sunday. In contrast, the Tesco pharmacy is open from 8am to 10pm Monday to Friday, 8am to 8pm on Saturday and 10am to 4pm on Sunday.

SERVICES

- 3.40 Existing pharmacies already offer the essential services referred to by the applicant (for example, signposting, healthy lifestyle advice, repeat dispensing, compliance aids).
- 3.41 The applicant states that all PCT commissioned enhanced services would be offered, but existing pharmacies already offer all such services (such as minor ailments). The applicant refers to the provision of smoking cessation services but, in fact, the Level 2 service has not been commissioned by the PCT in this neighbourhood.
- 3.42 The applicant refers to services for the elderly but does not provide any information to support the statement that there is a significant elderly population in the neighbourhood (in fact, there is not), or that the health needs of that population are not currently being met. The suggestion that “there will be a significant number of elderly and housebound living alone” is without foundation.
- 3.43 Our client has already approached the PCT to seek permission for the provision of domiciliary Medicine Use Reviews (PCTs must approve the provision of MURs away from the pharmacy) and the PCT has not granted permission, which suggests that such a service is not required by the PCT.

COMPLAINTS

- 3.44 Our client is not aware of any complaints regarding the provision of pharmaceutical services in the neighbourhood (notwithstanding the fact that there has been a GP surgery in the neighbourhood for at least four years).

CHOICE

- 3.45 With two pharmacies in the neighbourhood, those in the neighbourhood already have a reasonable choice of pharmaceutical services and service providers.

CONCLUSION

- 3.46 In conclusion, having regard to: the relatively small, affluent population in the neighbourhood; the proximity of existing pharmacies; the extended opening hours of existing pharmacies; the broad range of services offered by existing pharmacies; the lack of complaints; and the reasonable choice already provided in the neighbourhood we invite the Authority to uphold our client’s appeal and refuse this application.

4 Summary of Representations

This is a summary of representations received on the appeals. 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 MEDICX PHARMACY

Neighbourhood Definition

- 4.1.1 We maintain that our definition of neighbourhood is correct for the purpose of this application and that Fine Jane’s Brook is the northern neighbourhood boundary which separates Kew from the older neighbourhood directly to the north.

- 4.1.2 By referring to the map it can be seen that there are no residential roads crossing the Brook making this a clear geographical boundary between the two residential areas. Photographs 1 and 2 show that all of the roads reach a dead end before the character of the geography changes significantly to waste land (photograph 3) and then back to community use with the health centre and the hospital.
- 4.1.3 It can also be seen from visiting the area that the housing stock is very different either side of Fine Jane's Brook. To the south is Kew Estate which contains a mixture of housing types — a large number of three and four bedroom semi detached and detached homes but also a large number of bungalows. Examples of the typical housing in this area are shown in photographs 4 and 5. To the north the housing is significantly older, with small pockets of in-fill (as shown in photographs 6 and 7).

Population

- 4.1.4 We accept that the census data presented by Charles Russell on behalf of North Meols Pharmacy Limited is correct. However, the proportion of those aged over 60 (24%) is notably higher than the English average which is slightly under 21%. A high proportion of these older people are likely to live close to our proposed site in the area of bungalows immediately opposite the health centre (see photograph 8).
- 4.1.5 There is also a large Polish population who avail themselves of the medical services provided by Dr Halina Obuchowicz, Some of these patients live within the neighbourhood defined and others visit the neighbourhood from outwith. The Polish population tend to be young families who make particular use of pre and post-natal care provided by the practice in addition to normal medical complaints. There are approximately 600 Polish patients currently registered with the practice, accounting for almost 20% of the patient list. The practice have identified that many of these patients struggle with English verbal communication skills and have employed a Polish speaking receptionist to support Dr Obuchowicz and these patients.
- 4.1.6 It is our intention to employ a Polish speaking healthcare assistant or dispenser to ensure that MedicX Pharmacy can provide this patient population with the same excellent standard of healthcare advice as English speaking patients. This will ensure that patients understand how to take their medicines properly and can converse comfortably with a trained member of staff to discuss minor ailments, adherence issues, dosage instructions etc. We will also provide our main practice leaflet in Polish and work with Dr Obuchowicz and the Polish community to ensure that any other written literature they require is available in their mother tongue. None of the existing pharmacies in the locality provide support in the native language for this community.
- 4.1.7 MedicX Pharmacy have commissioned Rainbow Research Limited, an independent market research company, to undertake a survey of patients using Kew Surgery to seek their views regarding the existing pharmacy services in the area to determine whether there is evidence to suggest that a new pharmacy, located on the same site as the new surgery is required.
- 4.1.8 A report, based on the survey results, is attached which confirms that patients believe there is a gap in existing service provision and the majority believe that an additional pharmacy in Kew is required.

Housing Developments

- 4.1.9 Contrary to the statements made by the appellants, new housing developments in Kew are not on hold and are progressing with a higher degree of certainty than elsewhere in the UK. The following information has been obtained directly from Alan Young, Strategic Planning & Information Manager Planning and Economic Regeneration Department Sefton MBC and Neil Aindow, Facilities Manager at Southport and District Hospital and demonstrates that there is significant, known new housing planned for Kew:
- 4.1.9.1 675 homes to the West and South of Town Lane. Sefton Council have entered into a legal agreement with David Wilson Homes, site investigations have commenced and it is anticipated that building will commence in 2012
 - 4.1.9.2 10 homes on Norwood Road, planning permission has been granted
 - 4.1.9.3 18 Units on Sussex Road, construction underway
 - 4.1.9.4 12 Units on Linaker Street, planning permission granted
 - 4.1.9.5 23 homes on Warwick Close, construction under way
 - 4.1.9.6 203 homes of mixed type on hospital site, adjoining the surgery. This has been delayed due to ground conditions but the Hospital Trust (the land owners) have confirmed Cosmopolitan Homes are now proceeding with works and building will commence in late 2010
 - 4.1.9.7 168 homes on Virginia Street. Bellway Homes submitted planning application in August 2009 which was a revised scheme from an earlier approval which suggests they are planning to proceed
 - 4.1.9.8 96 homes on Scarisbrick New Road. Bellway Homes submitted planning application in August 2009 which was a revised scheme from an earlier approval which suggests they are planning to proceed

Access to existing pharmacies

- 4.1.10 I can confirm that, measured with a surveyor's wheel, the distance from the road entrance of the proposed site to the customer exit of the Tesco store is 903m. This journey involved crossing Town Lane Kew at the new pedestrian controlled lights, walking all the way down Town Lane Kew, crossing Folkestone Road and then entering the Tesco site, walking around the edge of the carpark, next to the Tesco building, to the exit doors. We strongly contend that this is the safest route possible rather than traversing the carpark, weaving in and out of stationary and moving traffic.
- 4.1.11 This journey is shown on the Google Earth map enclosed (Appendix E).
- 4.1.12 (Please note that new pedestrian controlled lights have now been installed outside the health centre since the original application was written. Whilst the journey and the distance remain the same crossing Town Lane Kew at the busy roundabout close to Tesco's is now negated due to the designated light controlled crossing point outside the health centre however Folkestone Road still needs to be crossed
- 4.1.13 On entering the Tesco site from this direction on foot a pedestrian still has a further 50m to walk to get to the entrance doors to the store. On entering the store the location of the pharmacy is not obvious and lack of directional signage within the store further exacerbates the difficulty in finding the pharmacy. In fact the pharmacy is located right at the back of the store adding another 50m or so onto the journey.

- 4.1.14 This journey on foot involves walking across the entrance to the Tesco deliveries area (see photograph 9). Tesco have a stringent policy about when deliveries can be received with drivers having specified time slots for delivery. Outside their allocated slots, drivers will wait on Folkestone Road until such a time they can enter the delivery bay. The presence of these lorries further exacerbates traffic congestion at this entrance and creates a hazardous situation for pedestrians and car users alike. Anecdotally we have been told that complaints have been made to Tesco about lorries waiting on Folkestone Road and the management have given their assurances that this will be resolved but it still continues.
- 4.1.15 The newly installed pedestrian lights outside the health centre now makes crossing Town Lane Kew easier for those people wishing to cross to the south side (which will include those who want to walk to Tesco). However, Folkestone Road still needs to be crossed. This road is extremely busy and whilst there is a pedestrian refuge in the middle there are still two lanes of traffic to be crossed on the carriageway leading up to the roundabout (see photograph 10). Problems at this crossing point are made worse when Tesco delivery lorries park along Folkestone Road, as described above.
- 4.1.16 For someone choosing to access North Meols Pharmacy, whether it is eventually agreed or not that this is within or outside the neighbourhood, the journey on foot is not pleasant due to the area of wasteland that has to be walked along on Town Lane. Whilst this is paved there are many overhanging bushes and trees which on a dark winter's afternoon could be a frightening or daunting journey for an elderly person or a mother with a young child in a pushchair (see photograph 3). For those travelling by car, there is some car parking outside albeit limited.

Opening Hours

- 4.1.17 We are aware of the extended opening hours that Tesco provide and commend them for providing this extended hours service. However, we do not agree with Mr Woolley's contention that this categorically proves the application is neither necessary or desirable. The determination of adequacy is simply not just an assessment of existing opening hours, the range and accessibility of these services are equally as important.

PCT Decision letter

- 4.1.18 We note the assertions made by Mr Woolley in paragraph 3 of his letter of appeal relating to the PCT's reasons for approving the application. Unlike North Meols Pharmacy, we had not received any supporting documents / PCT meeting minutes outlining the reasons for approving the application.
- 4.1.19 I understand that the Appeal Unit have a copy of these minutes but are unable to circulate them to interested parties. I have, on at least three occasions, requested a copy of these minutes from Central Operations Mersey and these were emailed to me on 16 November (copy attached – Appendix F).
- 4.1.20 It appears that Mr Woolley's comments in paragraph 3 are broadly based upon the PCT's reasons according to the minutes when the application was discussed. What seems unfair is that of all the interested parties, both applicant and appellants, only Mr Woolley knew the reasons for approving the application at the time the decision was made I during the 30 day appeal period.
- 4.1.21 Whilst we contend that absence of a delivery service and failure to provide Emergency Hormonal Contraception at Tesco pharmacy are two factors that

the PCT were well within their rights to consider when determining adequacy the evidence we have presented demonstrates that there is an overall gap in adequacy.

Rent and premium for the pharmacy unit

- 4.1.22 In the letter of appeal from Bispham Road Pharmacy, Mr Woolley comments that the PCT is reliant on an situ pharmacy at the health centre to subsidise the rent that would in effect be passed on to the PC It therefore asks the question was it ethically and professionally permissible for the PC Committee to decide upon this application when it was financially connected to the development
- 4.1.23 We contend that this assertion is factually incorrect and if this was the case every application for a new pharmacy / relocation of a pharmacy contract to a new health centre would have to be determined by a different cr. Negotiation of terms for securing the pharmacy unit within this new health centre have been undertaken with Oakapple, the developers and have nothing to do with the PCT.

Miscellaneous Comments

- 4.1.24 It is interesting to note that Tesco, the only pharmacy in our defined neighbourhood, have not objected to this application. This would indicate that they feel indifferently about the application and have no reason to contest the arguments made in our original application.
- 4.1.25 Previous applications in the locality were considered in the vicinity of Folkestone Road back in October 2004, over 5 years ago and Southport Business Park in January 2005. It is our contention that as the locations were different (and much closer to Tesco) and the applications determined before the implementation of the new pharmacy contract and updated NHS (Pharmaceutical Services) Regulations 2005, these previous applications (whose refusals were never appealed) are of little relevance in this case.
- 4.1.26 For these reasons we believe that this application is, at the very least, expedient to secure the adequate provision of services in Kew.

5 Unsolicited Comments

5.1 COUNCILLOR

- 5.1.1 I am aware that you are in receipt of appeals from two local pharmacy contractors who are appealing against the decision of Sefton PCT to approve a new pharmacy licence at Kew Surgery, Town Lane. Kew, Southport.
- 5.1.2 As a local resident and Councillor for the area I would like to provide you with the following information which may prove useful in your determination of this case.

New Housing

- 5.1.3 Contrary to the information provided by the two Chemists, plans for additional housing in Kew are progressing. There are over 1200 homes planned for the area, all within Kew ward, broken down as follows:
- 5.1.3.1 675 homes to the West and South of Town Lane. Sefton Council have just entered into a legal agreement with David Wilson Homes.

site investigations have commenced and it is anticipated that building will commence in 2012

- 5.1.3.2 10 homes on Norwood Road. planning permission has been granted
- 5.1.3.3 18 Units on Sussex Road, construction underway
- 5.1.3.4 12 Units on Linaker maker Street, planning permission granted
- 5.1.3.5 23 homes on Warwick Close, construction under way
- 5.1.3.6 203 homes of mixed type on hospital site, adjoining the surgery. This has been delayed due to ground conditions but the Hospital Trust (the land owners) have confirmed Cosmopolitan Homes are now proceeding with works and building is planned to commence in late 2010
- 5.1.3.7 18 homes in Ashdown Close to be developed by Adactus Housing Group, planning permission granted
- 5.1.3.8 168 homes on Virginia Street. Bellway Homes submitted a planning application in August 2009 which was a revised scheme from an earlier approval which suggests they are planning to proceed
- 5.1.3.9 96 homes on Scarisbrick New Road. Bellway Homes submitted a planning application in August 2009 which was a revised scheme from an earlier approval which suggests they are planning to proceed

Road Congestion

- 5.1.4 Town Lane, Folkestone Road, Scarisbrick New Road and Meols Cop Road all carry huge volumes of traffic in this area and all of these extremely busy roads meet at a roundabout adjacent to Tesco. Therefore anyone wishing to access Tesco by car has to negotiate the busy traffic system, which can be difficult and time consuming during peak hours.
- 5.1.5 Whilst pedestrians are able to walk relatively easily down Town Lane from the new health centre towards Tesco this is not a desirable walk in the dark or inclement weather conditions and due to the speed of the traffic is stressful for many of the older members of the community and mothers with babies in prams.
- 5.1.6 I should also point out that whilst a new light controlled crossing point has been constructed outside the new health centre to make crossing of Town Lane easier at this point pedestrians still have to negotiate the busy Folkestone Road and the congestion within Tesco itself
- 5.1.7 I have spoken to Tesco on numerous occasions about large delivery lorries being parked on Folkestone Road waiting to enter the delivery area, which cause major congestion and potential danger to pedestrians. I have been given commitments from the Tesco management that they will resolve this problem yet still it continues.
- 5.1.8 The next nearest Chemist is located on Southbank Road but the people of the Kew Estate tend not to visit this area during the course of normal daily activities, particularly if travelling on foot. For these reasons I do not believe that existing pharmacies are readily accessible for the residents of Kew and that this pharmacy will fill the gap that exists.

5.2 KEW SURGERY

- 5.2.1 On behalf of Dr Halina Obuchowicz and the rest of the practice team at Kew Surgery I write to support the application by MedicX Pharmacy to Open a new pharmacy at Kew Surgery.
- 5.2.2 Kew Surgery has recently moved from a portacabin in a public house car park to this purpose built health centre in Kew,
- 5.2.3 In our new building we are expecting to grow our patient list and broaden the range of services we are able to provide for our patients.
- 5.2.4 Our practice population is typically average in terms of age breakdown but a significant number of our elderly patients live in the bungalows directly opposite the new health centre. They have commented that they are now able to walk to the health centre rather than rely on relatives or friends to transfer them to the surgery but they do then have to get someone to take them to a pharmacy to get their prescriptions as it is too far for them to walk to Tesco's.
- 5.2.5 The pharmacy will also benefit from the Polish community and those who do not speak English as to ensure that that we are able to provide the best services for these patients, we have employed a Polish speaking receptionist and we understand that the pharmacy intend to employ a Polish speaking assistant too. This is much welcomed as Dr Obuchowicz frequently has to pick up queries from patients who are unable to understand the advice given by the local pharmacists.
- 5.2.6 We understand that the pharmacy is going to offer a delivery service, This is something that our patients, particularly the elderly or those with mobility problems will benefit greatly from as Tesco's do not deliver prescriptions,
- 5.2.7 Over 10% of our practice population suffer from coronary heart disease or hypertension. We believe that the pharmacy has an important role to play in supporting these patients with regular blood pressure monitoring and regular interventions about lifestyle factors. This is an area where we feel an on-site pharmacy can add huge benefit to patients.
- 5.2.8 In summary we believe that there is a gap in pharmacy services in Kew particularly for the elderly, which would be addressed by the granting of this application by MedicX Pharmacy.

6 Observations on Representations

6.1 Charles Russell

- 6.1.1 As a preliminary matter, I am instructed that the map provided with the appeal papers shows incorrect locations for the proposed site and existing pharmacies and surgeries, in fact, the location of the proposed pharmacy is opposite Hythe Close. My client's pharmacy is located on the corner of Southbank and Chesnut Street and Cumberland Surgery is on the corner of Cumberland and Scarisbrick New Road.

NEIGHBOURHOOD DEFINITION

- 6.1.2 Fine Jane's Brook is not the northern neighbourhood boundary but in fact runs through the centre of the neighbourhood of Kew.

- 6.1.3 It is incorrect to state that there are no residential roads crossing the Brook — both Scarisbrick New Road and Town Lane cross the Brook either side of the hospital site.
- 6.1.4 Photograph 3 does not show “waste land”. Whilst there may be some open recreational land off Town Lane this is used by residents in Kew for leisure purposes and also contains a children’s playground. There is no “waste land” in the neighbourhood. The applicant does not state where photograph 3 is taken.
- 6.1.5 The photographs provided by the applicant of housing are highly selective. Housing to the north and south of the hospital site are of mixed age and type but socially there is nothing to distinguish those living to the south and those living to the north. All residents in this area consider themselves as living in Kew.

POPULATION

- 6.1.6 There is no evidence to support the statement that “a high proportion of these older people are likely to live close to our proposed site in the area of bungalows immediately opposite the health centre”. On the contrary, information from the 2001 Census shows that, for the Super Output Area immediately opposite the proposed site, the percentage of those aged 60 and over is 24.05% compared to a Local Authority average of 24.59%.
- 6.1.7 Whilst there may be Polish patients registered with the GP practice the applicant is not Polish and the Litigation Authority cannot compel the applicant to employ a Polish speaker. Even if this application were granted there can be no certainty that the applicant would be able to employ a Polish speaker. In any event, it is well known that immigration from East Europe has slowed in recent years. No doubt the English language skills of those people currently registered with the surgery are improving and it is anticipated that this is a relatively stable population with little if any continued immigration. In addition, our client intends to shortly commence the use of the NHS telephone interpreting service, which will provide access to professionally qualified, medical interpreters 24 hours a day, every day of the year.
- 6.1.8 I note that the applicant has engaged the services of Rainbow Research Limited to carry out a survey. In relation to that survey we comment as follows:
- 6.1.8.1 Survey are rarely objective. With little reason to oppose a new pharmacy and no understanding of the control of entry regime patients will almost always support a new application. For that reason the Department of Health guidance to PCTs cautions against placing too much weight on such evidence (paragraph 23 of the Guidance).
- 6.1.8.2 It is of note that 88% of patients visiting the GP surgery have travelled by car even though two-thirds of patients live within one mile of the surgery. This is evidence that car ownership in the neighbourhood is high and the great majority of patients who visit the GP surgery have driven to get there (and can, therefore, easily drive to a pharmacy).
- 6.1.8.3 94% of those surveyed stated that they do not have any difficulty accessing a pharmacy (despite representations from the applicant to the contrary).
- 6.1.8.4 It is unsurprising that 82% of those questioned drove or used public transport to get to a pharmacy when 88% of those at the surgery

have got to the surgery by car. Having driven to the surgery patients would have no reason or need to walk to a pharmacy.

- 6.1.8.5 It is of note that 99% of patients were happy with the range of services provided by existing pharmacies (as the Authority will be aware, the principle reason for granting the application by the PCT was its perceived lack of provision of a delivery service and EHC by Tesco's). It is evident that those who responded to the survey make no criticism of the services provided by existing pharmacies.
- 6.1.8.6 Whilst 12% of those questioned might have referred to long waiting times at the Tesco pharmacy no indication is given as to what is meant by a long waiting time. It is inevitable that, on occasion, pharmacies are busy and that patients may have to wait for a prescription to be dispensed. This would no doubt be the same should a pharmacy be located at the GP surgery.
- 6.1.8.7 In relation to the services which are said to be required it is clear that patients were prompted to ask whether a range of services are required rather than giving a response unprompted. When asked specifically whether patients have any criticism of the services provided by existing pharmacies almost all (99%) were uncritical of it.
- 6.1.8.8 It is clear from the comments which are repeated in the survey that most of those who gave comments consider that it would be convenient to have a pharmacy at the doctors' surgery. Whilst that may be correct it would no doubt be convenient to have a pharmacy on every street corner. The purpose of the Regulations is to restrict entry on to a PCT's pharmaceutical list to only those applications which are necessary or expedient. There is nothing in the remainder of the survey to support the applicant's contention that this application is either necessary or expedient. In any event, since the applicant has not included copies of all completed survey forms, it is impossible to know whether the comments selected by the market research company are representative.

HOUSING DEVELOPMENTS

- 6.1.9 As the PCT correctly stated in its Meeting Minutes "as the housing development is a few years off, this was deemed to be irrelevant".
- 6.1.10 In relation to the largest development (to the west and south of Town Lane) both the councillors and the applicant mis-state the current position in relation to that site. The agreement between Sefton Council and David Wilson Homes is an exclusivity agreement combined with a licence to enter the site to carry out site investigations.
- 6.1.11 As is evident from the enclosed Council Meeting Minutes, site investigations have not yet taken place and it is possible that the survey will provide unsatisfactory results so that the development cannot go ahead (the Minutes state that 'subject to a satisfactory site investigation report this enables a viable development scheme to be prepared, the cost of the SIs will be an allowable development cost recoverable as part of the scheme. Should the site be determined as being unviable for home development as a result of the information determined from the SIs, DWH will be reimbursed for the SI cost by any future developer for the site").
- 6.1.12 There is clearly no certainty that this development will be able to proceed and certainly no planning application has been submitted or granted. On that

basis the possible housing development is too speculative for the Authority to take into account when determining this application.

6.1.13 The proposed developments on Virginia Street and Scarisbrick New Road do not have planning permission. The developments listed at Norwood Road, Sussex Road, Linaker Street and Warwick Close are nearer to my client's pharmacy than the applicant's proposed site,

6.1.14 In relation to the development of the hospital site my client understands that no work has commenced on the site and that the development has been delayed for a long period of time due to ground conditions,

ACCESS TO EXISTING SERVICES

6.1.15 On behalf of my client I have already provided information regarding the ease of access to pharmaceutical services at Tesco's and other pharmacies. The comments by the applicant are not supported by its own survey where 94% of those questioned stated that they have no difficulty getting to a pharmacy.

MISCELLANEOUS COMMENTS

6.1.16 It would be inappropriate to draw any conclusions from Tesco's failure to submit representations on this application.

6.1.17 The applicant mentions previous applications in the neighbourhood, misstating that the most recent application in January 2005 was nearer to Tesco than the current application. In fact Southport Business Park is further away, and was turned down as being neither necessary nor desirable.

6.1.18 There have been no significant changes in the neighbourhood in the intervening period.

LETTERS FROM KEW SURGERY AND THE COUNCILLORS

6.1.19 Whilst these letters appear to have been sent directly to the Litigation Authority it is evident that they have been seen by the applicant before being submitted (many of the comments contained within those letters are repeated verbatim in the applicant's letter). They cannot, therefore, be said to be independent of the applicant.

6.1.20 In relation to the letter from Kew Surgery this is said to come from Dr Halina Obuchowicz and yet talks about Dr Obuchowicz in the third person. The letter has clearly not been drafted by her.

6.1.21 Our client is not aware of any complaints regarding the current provision of pharmaceutical services in the neighbourhood.

6.1.22 For the reasons given above and those given in previous correspondence we invite the Authority to refuse this application as being neither necessary nor expedient.

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 (or location) 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 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").
- 7.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 7.6 The Committee considered the two definitions of the neighbourhood and concluded that the PCT definition reflected geographical boundaries and accepted this for the purposes of this application without prejudice to any future applications.
- 7.7 The Committee noted that there was no dispute with regards to the distance to the nearest services which is in excess of 900metres from the entrance of the construction site to the Tesco pharmacy, which took 15 minutes to walk, the terrain being flat. Whilst the applicant claimed this would be difficult for the elderly and those with young children no particular information was put forward to conclude that this is the case. It would also appear that for some of the relatively small population involved access to existing services would be just as convenient as it would be to the proposed location. There was no information to conclude access by the high proportion of those with private transport would be difficult.
- 7.8 There is nothing to conclude that commissioned services are not being provided or that there would be any meaningful advantage in those proposed by the applicant.
- 7.9 The Committee noted that there was currently one pharmacy in the neighbourhood, with others located in adjacent neighbourhoods. In the Committee's view it is not axiomatic that a contract is needed within a neighbourhood presently containing one pharmacy in order to secure adequacy. While there is no choice within the neighbourhood, the level of adequacy may be dependent on pharmaceutical services elsewhere. The Committee noted that there is one pharmacy located within 1 kilometre of the proposed site with others slightly further afield.
- 7.10 Taking into account all of the information available the Committee concluded it was unlikely that there will be any significant additional developments within the timescale of this particular application. With a pharmacy within the neighbourhood the Committee concluded that services were not wholly inadequate and as such was not necessary to grant the application.
- 7.11 The Committee noted the survey that the applicant had had commissioned and the comments with regards to convenience. The Committee were of the view that convenience of itself is not a determinative factor to be considered alone in accordance with the relevant test unless the degree is sufficiently high on the scale to suggest that it would contribute to a gap in provision.
- 7.12 In considering desirability for the reliant population the Committee noted that for those at Tesco for any reason pharmaceutical services were available for the reliant population. Whilst the Committee took into account representations supporting a grant it was concluded that the nature of these were such that only limited weight would be given. In total the Committee concluded that there was no gap sufficiently high on the spectrum to conclude adequacy was not currently secured and therefore it was not necessary or desirable to grant the application.

8 Decision

The Committee was of the view that the proposed pharmacy was neither necessary nor desirable to secure the adequate provision of services in the neighbourhood. Accordingly the Committee allows the appeals.

Jill Jackson
Appeal Officer

A copy of this decision is being sent to:

MedicX Pharmacy Ltd
Charles Russell on behalf of North Meols Pharmacy
Bispham Road Pharmacy
Dr H Obuchowicz of Kew Surgery
Central Operations Mersey on behalf of Sefton PCT