

2 February 2010

**REF: SHA/15549**

**APPEAL AGAINST HALTON AND ST HELENS PCT  
DECISION TO REFUSE AN APPLICATION BY J  
SIMPSON (CHEMISTS) LTD FOR PRELIMINARY  
CONSENT PRIOR TO INCLUSION IN THE  
PHARMACEUTICAL LIST IN THE VICINITY OF ST  
HELENS HOSPITAL, MARSHALLS CROSS ROAD, ST  
HELENS, WA9 3DA**

**1 The Application**

By application dated 28 April 2009, J Simpson (Chemists) Ltd ("the Applicant") applied to Halton & St Helens Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of St Helens Hospital, Marshalls Cross Road, St Helens, WA9 3DA. In support of the application it was stated:

- 1.1 In my opinion the neighbourhood is an area between A569, A570, Linkway East, Parr Street, Broad Oak Road, Newton Road, Pennington Lane, Penkford Lane, the railway line running east west and Robins Lane.
- 1.2 The new doctors surgery run by Aspect Health is to be located inside St Helens Hospital. This surgery has a target patient group which will include a high proportion of elderly and housebound people. The nearest pharmacy is 0.4 miles away from the hospital as the crow flies, but is nearly 1 mile by the shortest pedestrian route.
- 1.3 Aspect Healthcare have consulted their patients forum, a focus group for patients to air their views. At the last meeting the patients forum made strong representation requesting that there should be a pharmacy located within the hospital to serve the new doctors surgery.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 12 November 2009 states:

- 2.1 I refer to your application for the above. Halton and St Helens PCT Pharmaceutical Operational Group have refused your application for the reasons noted below:
- 2.2 Members had before them all papers and responses relating to the above application to be heard under Regulation 5(1)(a).
- 2.3 The group disagreed with the applicants defined neighbourhood. Based on the characteristics and movement of people, the group defined the neighbourhood as Mill Lane to the south, into Gerards Lane and then Lancots Lane to the east, followed by Sutton Road to the north into Marshalls Cross Road (A569) to the west. It was decided that there has been no changes to the population and that there are already three contractors within one mile of the neighbourhood boundary.
- 2.4 The group also noted that the pharmacy were not proposing any weekend hours and intend to close at 18:00 Monday to Friday, yet the GP surgery within the hospital will be open until 22:00. It was also noted that Boots at Ravenhead is open until midnight

and as patients would have to drive to the surgery due to its location, then driving to a near by pharmacy is a viable option.

- 2.5 The group also pointed out that numbers at the new GP practice were currently low, suggesting that patients were remaining loyal to their current practice.
- 2.6 Therefore the group concluded that a new contract was not necessary or desirable at the moment. Current provision is considered good and the applicants hours do not match the surgery and other pharmacies in the area, which provide longer opening hours. So, the application was refused.

### 3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 7 December 2009, J Simpson Chemist Ltd appealed against the PCT's decision. The grounds of appeal are:

- 3.1 I wish to appeal the decision of St Helens & Halton PCT for the preliminary consent for the above proposed pharmacy. I have studied the area around the hospital and do not agree with the neighbourhood as defined by Cheshire Health Agency. There are no boundaries such as busy roads or railway lines that would prevent patients from using the proposed pharmacy within the hospital and therefore I think that my definition of the neighbourhood is more realistic, being Parr St, Broad Oak Rd, Newton Rd and Pennington Lane to the north Penkford Lane to the east, Robins Lane and the railway line to the south and Scorecross, St Helens Linkway and Linkway East to the west.
- 3.2 Cheshire Health Agency also commented on my proposed opening hours, which stated that I intended to close at 6pm. These hours were my initial opening hours which I fully intend to increase once I have a full understanding of patient numbers and times they attend the surgery. My only reason for putting a closing time of 6pm was to keep the proposed pharmacy financially viable until both it and the doctor's surgery get established. I thought it better to approach it in this way, rather than promising to open much later and find that the pharmacy could not sustain the extra opening hours in the initial few months after opening. My eventual aim with this pharmacy is to at least match the opening times of the GP's surgery and I am very happy to give you an undertaking to this effect.
- 3.3 The pharmacy operations group concluded that driving to a pharmacy was a viable option. I disagree with this assumption as St Helens is a place of social deprivation and many people do not have access to a car to drive to a pharmacy. This statement is also contrary to the NICE document 'Accessibility planning and the NHS: improving patient access to health services' document, which states that one of its key lessons was to have "A focus on reducing the need to travel (especially by car) to NHS sites as well as improving access through sustainable means." The nearest pharmacy is on Robins Lane which took me over 15 minutes of brisk walking to reach. Should this journey be undertaken by a less than fit person or one pushing a child in a pram then the journey time would be significantly increased.
- 3.4 I have spoken to Aspect Health who operate the GP surgery 'Sherdley Medical Centre' and 'ElderCare', a virtual surgery for patients over 55 years of age, both from St Helens hospital. They inform me that the PCT requested them to provide their services from St Helens hospital as it was "The 'hot spot' requirement in St Helens for a new GP practice". The PCT did a lot of consultation with the public and the Patient & Public Involvement department before they came to this conclusion. This information is at odds with the statement made by the pharmacy operations group which implies that the GP surgery will not be well used. At present the surgery does have less than 200 patients but it is in temporary accommodation. Aspect Health Care's projected list sizes for ElderCare is 2500 patients after 5 years and for Sherdley Medical Centre is 6000 patients by 2014, so by any measure this will be a

very large GP practice within a relatively short time. To increase the patient list Aspect Health inform me that they are employing the services of a marketing consultant who is planning a targeted marketing strategy including leaflet drops, opening ceremony, radio commercials and bill board advertising. All this marketing will be started once the building is finished. The anticipated handover date is 14 December 2009 and the surgery will be fully functional from its permanent accommodation within the hospital by the first week in January 2010.

- 3.5 The new accommodation for the doctor's surgery occupies a whole floor of the hospital and at present there is sufficient accommodation to fit a pharmacy within this area. The directors of Aspect Health, namely Dr J Holden, Dr S Cox, Dr S Hargreaves and Dr M Vandessel are all keen to allow a pharmacy to share their accommodation. All of them perceive an integrated pharmacy and GP practice is the way to provide the most complete service to their patients. When Aspect Health has undertaken patient focus meetings with their patients, they cite having a pharmacy on site as been a very important factor. [sic] I have also spoken to deputy leader of St Helens council who has responsibilities for adult social care and health provision in the area and she and the three ward councillors for the area all support the application for a pharmacy within the hospital, I have attached a recent letter from Suzanne Knight (at appendix A), deputy leader of St Helens Council.
- 3.6 St Helens and Halton PCT have invested a large amount of capital to provide a GP service from St Helens hospital in a state of the art building. It seems short sighted to refuse a pharmacy contract for this setting as accessibility of NHS services for patients should be made as easy as possible and the current provision of pharmacy services in this area does not provide for this.[sic] I urge you to overturn the decision of the PCT and allow the people of this area of St Helens to receive a first class service from both committed GP practice and pharmacy services provider. In Conclusion I would say that the provision of a pharmacy within St Helens hospital is both necessary and desirable.

#### 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 LLOYDS PHARMACY

- 4.1.1 Halton and St Helens PCT have provide a detailed decision regarding its consideration of the application and we submit they have arrived at the correct decision.
- 4.1.2 The appeal does not provide details of any complaints. The letter of support refers to the convenience of older people being able to "have their prescriptions filled easily". This would be true of every situation but we submit is not indicative of inadequacy of service provision.
- 4.1.3 We note that the application does not propose to provide any different services to those that are already provided and does no propose to offer any additional opening hours. Indeed we note that the pharmacy would be closed on Saturdays and Sundays.
- 4.1.4 The applicant/appellant has not provided any evidence of inadequacy and the PCT confirm that adequate pharmaceutical services are already provided to the neighbourhood population.
- 4.1.5 For the above reasons we respectfully ask the FHS Appeal Unit to uphold the decision of the PCT and refuse the application and dismiss the appeal as

wholly adequate pharmaceutical services are already provided to patients, residents and visitors.

#### 4.2 BOOTS UK LTD

- 4.2.1 We agree with the PCT decision to reject the application and their reasoning.
- 4.2.2 We essentially agree with the neighbourhood defined by the PCT but suggest that the neighbourhood could be said to extend slightly further east to include the area around Monastery Lane.
- 4.2.3 Patients currently have a choice of pharmaceutical services in the neighbourhood and in adjacent neighbourhoods.
- 4.2.4 There are nine pharmacies within a one mile radius of the proposed site (NHS Choices) including the Boots Midnight Pharmacy at Ravenhead Park, located just off the A570 St Helens Linkway.
- 4.2.5 Our pharmacy provides patients with access to pharmaceutical services seven days a week and until midnight. Our pharmacy has consultation room that enables the provision of advanced and enhanced services including: Medicines Use Reviews, Emergency Hormonal Contraception, Care at the Chemists (Minor Ailment Scheme), Smoking Cessation, and free prescription collection services.
- 4.2.6 Out of hours GP services are also provided from dedicated facilities within our store between 6.30pm until midnight, Monday to Friday.
- 4.2.7 The applicant has failed to provide any evidence to suggest that the existing pharmacies in the area are unable to meet the present demand for pharmaceutical services or that these pharmacies will be unable to meet any future increase in demand for such services.
- 4.2.8 Furthermore, the applicant has failed to provide any indication of significant difficulties encountered whilst wishing to access pharmaceutical services in the area.
- 4.2.9 Free car parking is available at our pharmacy with dedicated spaces for disabled badge holders.
- 4.2.10 For those who wish to use public transport, numerous bus services run throughout the area going from St Helens Hospital in both directions to St Helens Bus Station in the town centre and along Robins Lane to Sutton.
- 4.2.11 The applicant has stated that they intend to increase their opening hours once they have a full understanding of patient numbers and times they attend the surgery.
- 4.2.12 It is our understanding, particularly given that to our knowledge no official notification has been supplied to amend these hours, that consideration of the application should be based on those submitted within the application form.
- 4.2.13 In conclusion, we submit the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

#### 4.3 THE CO-OPERATIVE PHARMACY

- 4.3.1 The Co-operative Pharmacy writes to support the decision of Halton and St. Helens PCT to dismiss the above application.
  - 4.3.2 The Co-operative Pharmacy would agree with the PCT's definition of neighbourhood and the fact that there is already adequate provision of pharmaceutical services. The new GP practices only currently have very few patients and it will be many years before a substantial patient list size develops. There are already pharmacies in this and surrounding neighbourhoods which provide services, and can readily cater for these patients.
  - 4.3.3 Given the above, The Co-operative Pharmacy requests the appeals authority reject the appeal by J. Simpson Chemists Ltd. and determines that the application is neither necessary nor expedient.
- 4.4 WA SALTERS (CHEMISTS) LTD
- 4.4.1 With regards to the above application, we would like to formally appeal against it as we feel it is neither necessary nor desirable to have a pharmacy in this location. [sic]
  - 4.4.2 The other existing pharmacy in the vicinity may not be of walking distance but with public transport often passing through the vicinity and following this route, it has never been a problem before.
  - 4.4.3 There has been no evidence submitted to suggest that current pharmaceutical services in the area are inadequately provided for.
  - 4.4.4 We are not aware at present of any patient complaints regarding existing pharmaceutical services in the area or accessibility problems to these existing pharmacies.
  - 4.4.5 In conclusion, if a new pharmacy contract at this proposed site is to be allowed, the applicant must prove that it is both necessary and desirable, as the applicant has clearly not proved this to be the case.

## 5 Consideration

- 5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site (or location) of the proposed pharmacy.
- 5.2 It also had before it the responses to the Authority's own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to Regulation 12(1), the necessary or desirable test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.6 The Committee noted that the neighbourhood defined by the PCT had been disputed on appeal by the applicant. The Committee noted that the neighbourhood proposed by the applicant encompassed a much larger area than that defined by the PCT. The Committee accepted that while those in the wider geographical area may use the

new GP surgery it had reservations as to the extent of the neighbourhood defined by the applicant and whether those to the northwest and south would consider themselves neighbours of one another. On this occasion and without prejudice to future considerations, the Committee adopted the PCT's more restrictive definition of the neighbourhood.

- 5.7 The Committee noted that there was currently one pharmacy located within the neighbourhood with another located on the periphery with others located slightly further afield in adjacent neighbourhoods. In the Committee's view it is not axiomatic that a contract is needed within a neighbourhood presently containing one pharmacy, if that is the case here, in order to secure adequacy. While there is potentially no choice within the neighbourhood, the level of adequacy may be dependent on pharmaceutical services elsewhere. The Committee noted that there are 9 pharmacies within 1 mile of the proposed site, the majority of which are located in the vicinity of existing medical services.
- 5.8 Given the above, the Committee considered that the current provision of pharmaceutical services could not be said to be wholly inadequate and therefore the application was not necessary. The Committee went on to consider, on the spectrum of adequacy, whether the application was expedient.
- 5.9 The Committee noted that the applicant is not proposing to provide any additional services which the existing pharmacies are not currently providing. In addition the Committee noted that no gaps had been identified by the PCT which this application would secure. The Committee noted that the applicant had provided no information to show that the existing pharmacies were not able to cope with current demand for services or any perceived future increase in demand, however this may arise.
- 5.10 The Committee noted the comments with regards to hours and the hours that the applicant had applied for. The Committee found there to be no information to show that there was a need for additional hours, however noted the comments with regards to the current extended opening hours of existing pharmacies. The Committee were of the view that if there was a shortfall in hours, for whatever reason, it could be remedied by the PCT directing an existing pharmacy to vary their hours accordingly.
- 5.11 The Committee noted the distances to the nearest pharmacies, which are not disputed by parties. The Committee is of the view however that distance of itself does not result in an inadequacy of pharmaceutical services. The Committee noted the comments from the applicant with regard to the elderly population and the high level of deprivation within the neighbourhood that access to pharmaceutical services is not adequate. The Committee noted however that no information had been provided to suggest that those on foot who were willing and able to do so could not access the existing pharmacies, or that those who had the use of a car would not be able to access existing pharmaceutical provision either within the neighbourhood or in adjacent neighbourhoods. Information had also been provided to suggest that there was a bus service for those without a car who are unable to access on foot.
- 5.12 The Committee noted the comments with regard to convenience of the proposed pharmacy being co-located within the new medical practice. The Committee was aware that convenience is not a factor to be considered alone in accordance with the relevant test unless the degree is sufficiently high on the scale to suggest it would contribute to a gap in provision.
- 5.13 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the current provision within that neighbourhood, together with any potential advantage that could be gained by granting this application, in particular by way of access and a reasonable choice of provider, given that a purpose of being in that neighbourhood may be to access primary medical services from which pharmaceutical services may be required by the reliant population, then the Committee determined that pharmaceutical services were

currently secured to the extent that it was neither necessary nor expedient to grant the application.

## 6 **Decision**

The Committee was of the view that the proposed pharmacy was neither necessary nor expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeal.

**Jill Jackson**  
**Appeal Officer**

A copy of this decision is being sent to:

J Simpson (Chemists) Ltd  
Lloyds Pharmacy Ltd  
Boots UK Ltd  
The Co-operative Pharmacy  
WA Salters (Chemists) Ltd  
North Cheshire, St Helens and Knowsley LPC  
Cheshire Health Agency on behalf of Halton and St Helens PCT