

2<sup>nd</sup> February 2010

REF: SHA/15523

**APPEAL AGAINST HALTON & ST HELENS PCT  
DECISION TO REFUSE AN APPLICATION BY LLOYDS  
PHARMACY LTD FOR PRELIMINARY CONSENT  
PRIOR TO INCLUSION IN THE PHARMACEUTICAL  
LIST IN THE VICINITY OF CHURCH ROAD, WOODSIDE  
ROAD AND ST JOHNS AVENUE, NEW BOSTON,  
HAYDOCK, MERSEYSIDE**

**1 The Application**

By application dated 21<sup>st</sup> May 2009, Lloyds Pharmacy 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 Church Road, Woodside Road and St Johns Avenue, New Boston, Haydock, Merseyside. In support of the application a map was submitted.

**2 The PCT Decision**

The PCT considered and decided to refuse the application. The decision letter dated 21<sup>st</sup> October 2009 states:

2.1 The group decided that as a 100 hour pharmacy has recently been approved, it is therefore not considered necessary or desirable to have a further contract in this area and so the application has been refused.

**3 The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 10<sup>th</sup> November 2009, the Applicant appealed against the PCT's decision. The grounds of appeal are:

3.1 The PCT refused the application on the basis that they had approved a 100 hour application to the same site. The PCT has therefore, not considered the merits of the application or examined the likelihood of the other contractor opening.

3.2 There are now plans for medical services to be provided from within the neighbourhood which is a change in circumstances from any previous consideration in the area. Given the distances involved to the nearest pharmacies the Applicant does not consider the existing provision of pharmaceutical services to be wholly adequate.

3.3 For the above reasons the Applicant respectfully asks the Appeal Unit to reconsider the application and uphold this appeal as it is necessary or desirable to secure the adequate provision of pharmaceutical services.

**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 CHESHIRE HEALTH AGENCY

- 4.1.1 Halton and St Helens PCT would like to bring to the Appeal Unit's attention that several applications for the same site have already been approved this year. These include:
  - 4.1.1.1 Minor relocation (over 500m) by Donlon Pharmacy, from Station Road to Woodside Road in Haydock.
  - 4.1.1.2 100 hour application by Lloyds Pharmacy in the vicinity of Woodside Road, Haydock.
  - 4.1.1.3 100 hour application by Assura Pharmacy in the vicinity of Church Road and Woodside Road in Haydock.
- 4.1.2 The PCT have also advised that the enhanced services available in Haydock include those provided by Brian H. Donlon Pharmacy Ltd. These are care at the chemist (minor ailments scheme), nicotine replacement therapy (voucher service), emergency hormonal contraception (PGD), choramphenicol (PGD) and trimethoprim (PGD), on demand availability of palliative care medicines.
- 4.1.3 The enhanced services that are not provided in Haydock include nicotine replacement therapy (intermediate service), supervised consumption and needle and syringe provision.
- 4.2 W. A. SALTER (CHEMISTS) LTD
  - 4.2.1 Regarding the above application, W. A. Salter feel an additional contract is neither necessary nor desirable in this area. Already Brian H Donlon Pharmacy provides a more than adequate pharmaceutical service as W. A. Salter are sure the local population (the people who matter) would agree.
  - 4.2.2 There have been no complaints with regards to existing services being provided by both Donlon's and W. A. Salter.
  - 4.2.3 Surely if it isn't broke then there is no need to "fix" it?
- 4.3 NORTH CHESHIRE, ST HELENS & KNOWLSEY LPC
  - 4.3.1 North Cheshire, St Helens & Knowsley LPC does not wish to make any additional comments at this point in time.

Letter to PCT dated 21<sup>st</sup> July 2009
  - 4.3.2 Firstly, the LPC does not agree with the applicant's proposed neighbourhood. The LPC is aware that the PCT has a defined neighbourhood for this area and would suggest that this is an appropriate neighbourhood to use when considering this application.
  - 4.3.3 There is already a pharmacy within this neighbourhood, less than a mile from the applicant's proposed site. The LPC is not aware of any complaints being made to the PCT regarding the services provided by this pharmacy contract.
  - 4.3.4 The LPC is also aware of a recent NHS Litigation Authority appeal to open a pharmacy within this vicinity, which was dismissed. It therefore considers the application to be neither necessary nor desirable to secure pharmaceutical services in the neighbourhood.
- 4.4 BOOTS UK LTD

- 4.4.1 Boots agree with the PCT decision to reject the application and their reasoning.
- 4.4.2 It is Boots' understanding that previous applications submitted under Regulation 12 for this locality have been rejected. Boots also understand that at least one grant is extant for a 100-hour pharmacy at this location and that the PCT have approved an application for a minor relocation to Woodside Road (currently at appeal - Case Ref SHA/15352).
- 4.4.3 To Boots' knowledge none of the applications submitted recently have since been withdrawn.
- 4.4.4 Lloyds Pharmacy made reference to 100-hour applications in the area when commenting on previous applications. However, Boots are somewhat puzzled by Lloyds Pharmacy's comments with regard to the PCT approving a 100-hour pharmacy application as Boots' records show that in addition to the 100-hour application from Assura Pharmacy, Lloyds also submitted a 100-hour application (preliminary consent) which was subsequently granted by the PCT.
- 4.4.5 Lloyds Pharmacy have provided no evidence to suggest that a further new contract is necessary or desirable to secure the adequacy of services in the area.
- 4.4.6 The appellant 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.
- 4.4.7 In conclusion, Boots submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

#### 4.5 FAIRBREAK LTD

- 4.5.1 With regard to the above listed application Fairbreak fully support the PCT's decision in refusing the application. Fairbreak have nothing further to add to their original comments at the present time, but would like to be kept informed of developments regarding this application.

Letter to PCT dated 25<sup>th</sup> July 2009

- 4.5.2 Lloyds Pharmacy Ltd has already applied for a 100 hour contract in this same vicinity. This application under the necessary or desirable test must reflect on their willingness to provide the services required of them under their 100 hour application.
- 4.5.3 The neighbourhood defined by the applicant differs from that defined by the PCT and upheld at appeal only 12 months ago. Since there have been no material changes within the area in the intervening period then there is no reason to make any changes to the PCT defined neighbourhood.
- 4.5.4 As indicated in the previous point the PCT defined the neighbourhood whilst determining an application 12 months ago, this application was refused and the decision upheld on appeal.

4.5.5 The PCT already has two 100 hour applications, two applications under the necessary or desirable test and a minor relocation over 500m to the same vicinity, it cannot consider that a further application is necessary.

#### 4.6 THE CO-OPERATIVE PHARMACY

4.6.1 The Co-operative Pharmacy wishes to write and support the decision of Halton & St Helens PCT to reject the above application.

4.6.2 While agreeing with the applicant that this is a separate neighbourhood to the remainder of Haydock, The Co-operative Pharmacy would point out that there are currently two new pharmacy contracts granted in the immediate vicinity.

4.6.3 In addition the relocation of an existing contract has been approved by the PCT but has been appealed against.

4.6.4 The Co-operative Pharmacy would also point out that the new surgery has not yet received final planning permission, nor has it reached financial close with the PCT, so it is still not certain that it will even be built. Until this is resolved, the proposed new medical centre should not be a consideration.

4.6.5 Given the above, The Co-operative Pharmacy requests the appeals authority uphold the decision of Halton & St Helens PCT and determines that the application is neither necessary nor expedient.

## 5 Consideration

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

5.2 It also had before it the responses to the Authority's own statutory consultations.

5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

5.4 The Committee had regard to Regulation 12(1), the necessary or desirable test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").

5.5 The Committee dealt with the application by way of reconsideration of all the issues.

5.6 The Committee noted the PCT neighbourhood which was that accepted in a previous appeal ref. SHA/14544. The Committee noted that the PCT had not defined a neighbourhood in its decision letter, but had provided a map to this Authority which delineated the neighbourhood boundary, which is different to that delineated by the applicant (and supported on appeal by The Co-operative Pharmacy). The Committee was provided with no reasons as to why it should prefer one neighbourhood over the other. The Committee was of the view that whichever neighbourhood was preferred it would not materially affect its decision. The Committee therefore accepted the neighbourhood as defined by the applicant, without prejudice to future applications.

5.7 The Committee noted that two applications for 100 hour pharmacies and one application for minor relocation to the same vicinity had been granted in August 2010.

The Committee noted that the minor relocation application was currently subject to appeal (ref. SHA/15352). The Committee had regard to the Applicant's comment that the PCT had not examined the likelihood of other contractors opening however saw no information to suggest that this would not be the case. The fact remains there are two extant grants for 100 hour pharmacies, one of which was awarded to the Applicant. On this basis the Committee took the view that it was not necessary to grant the current application.

- 5.8 Whilst having regard to the above grants and the letter of appeal, the Committee were of the view that no information has been provided by the applicant to suggest that the granting of a further contract is expedient to secure the adequate provision of pharmaceutical services in the neighbourhood.

## **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.

### **Abby Richards Appeal Officer**

A copy of this decision is being sent to:

Lloyds Pharmacy Ltd  
Cheshire Health Agency, on behalf of the PCT  
Boots UK Ltd  
W A Salter (Chemists) Ltd  
Fairbreak Ltd  
The Co-operative Pharmacy  
North Cheshire, St Helens & Knowsley LPC