

8<sup>th</sup> December 2009

**REF: SHA/15339**

**APPEAL AGAINST STOCKTON ON TEES PCT DECISION TO GRANT AN APPLICATION BY L ROWLAND & CO (RETAIL) LTD FOR MINOR RELOCATION UNDER 500 METRES, FROM 64-66 NORTON ROAD, STOCKTON ON TEES TS18 2DE TO THE PLOT OF OLD QUEENS HEAD HOTEL, LAND AT 72 BISHOPTON LANE, STOCKTON**

**1 The Application**

By application dated 18<sup>th</sup> December 2008, L Rowland & Co (Retail) Ltd ("the Applicant") applied to Stockton on Tees Primary Care Trust ("the PCT") for minor relocation under 500 metres, from 64-66 Norton Road, Stockton on Tees TS18 2DE to the plot of Old Queens Head Hotel, land at 72 Bishopton Lane, Stockton.

1.1 Proceed down Norton Road through Hume Street. Along Allison Street and down Bishopton Lane to the corner of the plot of Old Queens Head Hotel (corner of Balaclava Street and Bishopton Lane).

1.2 Access by the local population to pharmaceutical services will not be compromised.

**2 The PCT Decision**

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

2.1 Stockton-on-Tees PCT feels that the applicant has met all criteria in respect of the above and the Minor Relocation has been granted.

**3 The Appeals**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 25<sup>th</sup> August 2009, Whitworth Chemists Ltd appealed against the PCT's decision. The grounds of appeal were:

3.1 This application seems to be more than 500m away from its original location.

3.2 It will also serve another neighbourhood and the neighbourhood is adequately served by existing pharmacies, providing good access to NHS pharmaceutical services. As these pharmacies are operated by several companies, there is adequate competition and choice.

3.3 Whitworths have been informed by the local PCT that this minor relocation has been granted and Whitworths believe it will prejudice the services currently provided by the neighbouring pharmacies, therefore Whitworths strongly object to the fact that the application has been approved and wish to lodge their objection.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 7<sup>th</sup> September 2009, Lloyds Pharmacy Ltd appealed against the PCT's decision. The grounds of appeal were:

3.4 Lloyds would submit that the proposed relocation involves a move into a different neighbourhood. The A139 is a major road (ring road) around Stockton Town Centre. The PCT has defined a neighbourhood for the application but Lloyds would submit that it is defined by the A139 to the west, the A1305 Maritime Road to the east, and South. The northern boundary being the intersection of the A1305 and A139.

- 3.5 Lloyds do not believe that the two sites are in the same neighbourhood and are not as conveniently accessible due to the access restrictions caused by the major A139 Road. This road has railings along its length to prevent people running across the road.
- 3.6 For the above reasons therefore Lloyds submit that the criteria for minor relocation has not been satisfied and therefore Lloyds respectfully ask the appeal be upheld and the application refused.

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 9<sup>th</sup> September 2009, Norchem Healthcare Ltd appealed against the PCT's decision. The grounds of appeal were:

- 3.7 Norchem wish to appeal against the granting of a minor relocation on the following grounds:
- 3.7.1 Norchem don't consider it to be within the same neighbourhood. Allison Street is a dual carriageway which effectively creates a physical barrier between the area in which the pharmacy is currently located and that to which it wishes to relocate.
- 3.7.2 The map attached to the application is unclear. It appears there are four separate routes from the numbers on the left hand side. However, the routes are not marked and numbered on the map provided.
- 3.7.3 Who has measured the routes? Again this is unclear as they are very close to the limit for a minor relocation, Norchem would want to be clear that they have been measured by NEFHSA.
- 3.7.4 The practicality of the routes is also of concern. The two routes which may be 15m less using the underpass may not be practical at all for elderly people for safety reasons.
- 3.7.5 Norchem request that the application is reconsidered.

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

- 3.8 Boots disagree with the PCT decision to approve the application and their reasoning.
- 3.9 The applicant has provided details of four potential routes a patient could take between the two locations, two of which are over 500 metres and two slightly less. The PCT has not indicated which of these routes has been accepted by the PCT as the most practicable.
- 3.10 A patient of the existing pharmacy would have to cross the busy A139, Allison Street, which has few crossing points. Crossing would be particularly difficult for those with mobility problems or parents with young children. Boots submit that barriers exist between the two locations and therefore the above application does not meet the required criteria of a minor relocation.

#### 4 **Summary of Representations**

This is a summary of representations received on the appeals.

##### 4.1 CLEVELAND LPC

- 4.1.1 Of the members present all but 3 declared an interest in the application and took no part in the discussion.

- 4.1.2 It is the LPC's view that Allison Street forms a significant barrier between the locations. It is a dual carriageway with no zebra or light operated pedestrian crossing points and although crossing points, with dropped curbs, are present the LPC do not consider these adequate for such a busy road. Alternative routes result in a journey of greater than 500 m.
- 4.1.3 The LPC do not therefore believe that this application meets the requirements for a minor relocation of less than 500m.

## 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 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 6(1) and 6(3) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 5.5 The Committee noted the PCT's decision on this application had been notified with a right of appeal, to Whitworth Chemists Ltd, Lloyds Pharmacy Ltd, Norchem Healthcare Ltd and Boots UK Ltd. Regulation 29(2) indicates that where the PCT has determined an application to which regulation 6(1) applied, the applicant and any person who has been notified of the decision under regulation 27(1)(a)(ii) or (iii) may appeal to the Secretary of State. Regulation 27(1)(a) includes 'an application to which regulation 6 applies' thereby (in the Committee's view) including regulation 6(3) (minor relocation applications under 500 metres). The Committee proceeded to determine the appeals.
- 5.6 The Committee dealt with the application by way of reconsideration of all the issues.
- 5.7 The Committee noted that the PCT had not specified a neighbourhood definition and considered the appellants' contention that Allison Street forms both a barrier between the existing and proposed sites and further that it should be considered a neighbourhood boundary. The Committee noted comments that it a busy dual carriageway and although the LPC confirm that there crossing points exist, these are not pedestrian controlled.
- 5.8 The Committee noted that the PCT map supplied indicated the distance between the two sites to be 490m or 499m depending on the route taken. Whilst the Committee accepted that this may be considered minor in the context of the area in question, the Committee were mindful of the potential barrier created by Allison Street, whether or not it is considered a neighbourhood boundary. The Committee noted that neither the applicant nor the PCT had sought to dispute any aspect of the appeals, and were not persuaded that the population in respect of the current site could reasonably access the proposed site should they choose to do so.

## 6 Decision

The Committee was of the view that the proposed change of premises was not a minor relocation. Accordingly the Committee allows the appeals.

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

A copy of this decision is being sent to:

L Rowland & Co (Retail) Ltd  
Norchem Healthcare Ltd  
Whitworth Chemists Ltd  
Lloyds Pharmacy Ltd  
Boots UK Ltd  
Sainsbury Supermarkets Ltd  
Morrisons Supermarkets plc  
Cleveland LPC  
North East FHSA on behalf of Stockton on Tees PCT