

21 January 2010

REF: SHA/15456

**APPEAL AGAINST PETERBOROUGH PCT DECISION
TO REFUSE AN APPLICATION BY M NANJI FOR
INCLUSION IN THE PHARMACEUTICAL LIST AT 123
BELSIZE AVENUE, WOODSTON, PETERBOROUGH
PE2 9HY**

1 The Application

By application dated 10 March 2009, (“the Applicant”) applied to Peterborough Primary Care Trust (“the PCT”) for inclusion in the pharmaceutical list at 123 Belsize Avenue, Peterborough PE2 9HY. In support of the application it was stated:

- 1.1 Woodston already had pharmaceutical provisions by virtue of an existing pharmacy which has been unexpectedly closed down. The applicant feels that it is still necessary and desirable to have pharmaceutical services within the Woodston area, and would like to continue providing health care to one of the most deprived areas in Peterborough.
- 1.2 The PCT had previously regarded a pharmacy in the area as being necessary and desirable.
- 1.3 The applicant ran the previous pharmacy successfully for over 10 years before the present owners who ran it on locums. The pharmacy will provide for employment for 3 persons as in the past.
- 1.4 There is a major development of houses off London Road, which will also need pharmaceutical services.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter from Anglia Support Partnership (on behalf of the PCT) dated 28 September 2009 states:

- 2.1 The Pharmacy Committee looked at the application and comments from the consultees and concluded that the granting of this application was neither necessary nor desirable in order to secure the adequate provision of pharmaceutical services to the neighbourhood.

Necessary or desirable

Neighbourhood

- 2.2 Firstly the Pharmacy Committee considered the neighbourhood and noted that the applicant hadn't suggested an alternative neighbourhood. The neighbourhood boundaries in Peterborough were redefined by the Trust in 2005, and the Committee agreed that there had not been any significant changes in the area in question since the previous definition, and therefore agreed that it did not warrant redefining.

Necessary or Desirable

- 2.3 The application does not explicitly identify any service inadequacies, and nor is there evidence of this either from representations received.
- 2.4 The Committee noted there are already in excess of 20 pharmacies located within a 2 mile radius of the proposed site, three of which are located just outside the defined neighbourhood and are 100hr pharmacies.
- 2.5 The population of Peterborough already have a significant choice of different providers. The Trust also consider that the existing providers are adequately meeting the needs of the current population and it should be noted that it was agreed that contractors would be approached to increase their hours/provide additional services should the need arise.
- 2.6 The applicant makes particular reference to the pharmacy (Woodston Pharmacy), which was located in Belsize Avenue, but closed down earlier this year, and therefore the necessity to reopen a pharmacy in the same area to continue to provide healthcare services to a deprived area. The Committee were aware that Woodston Pharmacy closed in March this year due to very low dispensing numbers, which the previous owners considered made the pharmacy unviable. The Committee therefore considered that granting this application with this knowledge and the likelihood that a similar situation would develop again would be unfair on local residents and surrounding practices. It was also noted by the Committee that the applicant had failed to submit any evidence to substantiate his claim for the need to replace the pharmacy.
- 2.7 Neither Peterborough Primary Care Trust nor Anglia Support Partnership has received any complaints or concerns regarding the current level of service within that area being inadequate following the closure of the previous pharmacy. The Committee considered this to be an indication that the local population considered access to pharmaceutical services to be adequate and questioned the need to replace with another pharmacy in the same location.
- 2.8 The applicant's intention is to provide the full range of essential and advanced services. However they have not identified any specific needs, which are not currently provided by the existing providers and therefore cannot be considered to be a serious attempt to help deliver the PCT's health priorities. It was also noted that the applicant proposed to provide a significant number of 'enhanced services'. The Trust at present does not have any plans to commission any additional enhanced services in the area.
- 2.9 Significant reference has been made to pending developments in the area. The applicant has provided no evidence to indicate that the existing healthcare providers in the area would not meet the future healthcare needs of these residents.

3 **The Appeal**

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 20 October 2009, the applicant appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The Pharmaceutical Needs Assessment had identified the area covered by the previous pharmacy as an area which required the services of a pharmacy. The area may have not altered significantly at the moment but as the committee maybe well aware, there is further development ongoing at the Southbank area of Peterborough which would significantly require the need of a pharmacy.
- 3.2 Since this application is pertaining to the area of Woodston, the applicant feels that the provision of pharmaceutical services outside the area should not be a deciding factor in considering this application.
- 3.3 In considering the current provision of pharmaceutical services, the trust should have noted that it had allowed the previous pharmacy to provide services to the local population, giving

them greater access to services. The proposed area of the application is one of, if not the most deprived areas of Peterborough.

- 3.4 The nearest pharmacy is only accessible via the crossing of a main road. This will not be suitable or acceptable to many elderly residents of the outlined area.
- 3.5 The trust has mentioned the financial viability of sustaining a new pharmacy since the previous pharmacy (Woodston pharmacy) closed down due to low dispensing numbers. The financial viability of a pharmacy should not be a primary concern, a poorly run business and poorly managed pharmacy will inevitably lead to a decline in dispensing volume.
- 3.6 It has come to light that low dispensing numbers was not the primary reason the pharmacy closed, it was due to a disagreement. In Mr S.Damani's application and subsequent appeal (SHA/15040), the appeal committee did a site visit and found as in paragraph 2.16 of their report. This led to the closure of the pharmacy.
- 3.7 With the current shift to payment weighing further and further on service provision rather than dispensing volumes for pharmacy remunerations, this dispensing volume would not be a significant factor in providing pharmaceutical care to the local population. The applicant feels it is already unfair for the local population not to have access to a local pharmacy as they have done so for the last 15 years.
- 3.8 There is no pharmacy currently providing any pharmaceutical services in the area. There is a gap in delivering local services such as the minor ailment scheme, the stop smoking initiative, sexual health screening and medication use review to name but a few.
- 3.9 As there are no pharmaceutical services within the area there cannot be any complaints about the lack of services within the area. The Trust have assumed this to indicate that there is no need for the application which is an incorrect assumption.
- 3.10 The Trust must use the current guidelines of assessing the pharmacy application. These do not have provision of approaching other contractors to increase their level of service, or even open hours to accommodate any local shortfall of pharmaceutical provisions. The Trust is making an undue assumption that the other services providers will oblige, when in effect they are not contractually bound to do so. This may result in substantial remuneration for extending the level of services to the other contractors who may not accept the need to do so.
- 3.11 There was until the middle of this year, enhanced services available within the area and so the Trust would not have had to re-commission any new services, but allow the continuation of previously provided 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.

Jhoots Pharmacy

- 4.1 Jhoots Pharmacy strongly support the decision of Peterborough PCT to reject the application by Mr Nanji above as neither necessary nor desirable for adequate provision of pharmaceutical services in the neighbourhood.
- 4.2 Jhoots would first like to present their original representations against the application.

Jhoots Original Representations to Peterborough PCT 3/9/2009

Jhoots Pharmacy urges the PCT to reject the application by Mr Nanji. It is Jhoots Pharmacy's opinion that Mr Nanji has not proved that his application is either "Necessary or desirable to

secure the adequate provision of Pharmaceutical services in the Neighbourhood for the following reasons:

- 4.3 In the existing locality there are already 20 Pharmacies within a 2 mile radius of Belsize Avenue (www.nhs.uk), three of which are significantly less than 1 mile away. These Pharmacies are well distributed to provide, good patient choice and good pharmaceutical services. All Pharmacy's are easily accessible by foot, car and by a very good Public transport system.
- 4.4 The distance that residents need to access pharmaceutical provision is not unreasonable.
- 4.5 Jhoots will say that the service provision in the surrounding area is more than adequate and there are numerous collection and delivery services already in operation to service the community.
- 4.6 Prescription Collection and Delivery services aim to fulfil an element of essential service obligations and support patients with access to their medication.
- 4.7 Jhoots Pharmacy is the closest pharmacy at approx 0.4 miles away and is situated next to the main GP Practice in the area. This Pharmacy is within very easy reach of Belsize Avenue, and offers a comprehensive Prescription collection and delivery service to the whole community. Jhoots Pharmacy is in the heart of the neighbourhood with ample parking for patients.
- 4.8 Jhoots Pharmacy is unaware of any complaints or concerns from the residents of the locality to suggest that there is a need for further Pharmaceutical services within the area or that the current services are inadequate.
- 4.9 The Applicant states that there was a previous pharmacy on the site of his proposed application which has "closed down". This would suggest that the Pharmacy was not viable and that the residents of the locality itself did not deem the Pharmacy as either necessary or desirable. It would further suggest that the residents decided that other Pharmacy's in the area were more accessible.
- 4.10 All existing Pharmacy's in the area offer and provide all the Essential services within the Pharmacy Contract, as well as the advanced and enhanced services supported by Peterborough PCT.
- 4.11 The applicant is not proposing to provide any additional services which are not currently available at all the pharmacies within the area, so is therefore unnecessary as there are no gaps in provision which could be filled by the applicant.
- 4.12 The Applicant states "there is a major housing development", however he fails to declare that the Anglia Support Partnership has already received an application for a Pharmacy within that development area, hence the Applicant's application is not necessary.
- 4.13 The Applicant has not demonstrated that existing pharmacy's are not able to meet the current demand, or any future demand, or that there is "inadequacy" in the existing pharmaceutical services.
- 4.14 In conclusion, Jhoots Pharmacy, would dispute the consideration by the Applicant that services in the area are less than wholly adequate and they feel that it would be both unnecessary and undesirable to grant this application.

Jhoots Pharmacy Comments on the Appeal

- 4.15 As already stated Jhoots Pharmacy strongly support Peterborough PCT's decision to reject Mr Nanji's application as neither necessary or desirable for the adequate provision of Pharmaceutical services for the following reasons.

- 4.16 The PCT have identified the neighbourhood and remains as identified in 2006. It states that there has been no significant changes in the area since definition.
- 4.17 The Applicant has made no request to change the definition of the Neighbourhood.
- 4.18 The Applicant has stated that his application is pertaining to the area of Woodston, and that “other Pharmacies should not be a decided factor in considering the application”. What Mr Nanji has failed to point out is that the PCT defined neighbourhood is not just Woodston, it includes parts of Fetton (sic) in which there is a Pharmacy.
- 4.19 The Applicant also fails to point out that a significant part of Woodston is outside the PCT defined neighbourhood; since he has failed to identify a new neighbourhood his arguments should be void.
- 4.20 There are already Pharmaceutical services within the defined neighbourhood by Odedra Chemist. This therefore negates the neighbourhood requiring a further Pharmacy as being either necessary or desirable.
- 4.21 There are already in excess of 20 Pharmacies within a 2 mile radius, three of which are positioned on the boundary of the neighbourhood.
- 4.22 Therefore by definition there are adequate provisions of Pharmaceutical services as identified by the PCT in its decision.
- 4.23 The Applicant “considers the current provision of pharmaceutical services” he goes on to state that “the nearest pharmacy is only accessible via crossing of a main road. This will not be suitable or acceptable to many elderly residents” What the Applicant fails to offer is any evidence to any complaints received at the PCT or any other regulatory body as to the lack of Pharmaceutical services in the area. In fact the PCT states in its rejection of the application “The population of Peterborough already have significant choice of different providers The trust also consider that the existing providers are adequately meeting the needs of the current population and should be noted that contractors would be approached to increase their hours/provide additional services should the need arise.” Jhoots Pharmacy is also unaware of any complaints or concerns about service levels in the area.
- 4.24 The Applicant states that the PCT should not rely on other contractors amending their services to satisfy need, however the PCT have clearly stated that there is no need for more services etc. So this point is irrelevant to the appeal.
- 4.25 The Applicant relies on an appeal hearing for SHA/15040 stating in section 2.1.6 that the closure of the previous pharmacy in Belsize Avenue was due to land lord issues. There are two further shop premises available in Belsize Avenue within a few doors of the old Pharmacy, Jhoots Pharmacy are unaware of any attempt by the previous owner of the Pharmacy to seek relocation to alternate premises to maintain Pharmaceutical services in the area. This adds more credence to the PCT confirmation that the volume of NHS Script business was extremely low and unviable.
- 4.26 The App states “There is a further development ongoing at the Southbank area of Peterborough which would significantly require the need for a Pharmacy” Jhoots would refer the Appeal Committee to the Appeal report SHA/15040 - 3 July 2009 on which the Applicant relies for information. The Appeal committee decided that a Pharmacy within that area was neither necessary nor desirable for the provision of Pharmaceutical Services.
- 4.27 If the Applicant was so concerned about the continuity of NHS Pharmaceutical services from Belsize Avenue then since he seems to have the premises why did he not seek to attempt to purchase the contract from the previous owner and relocate to his premises?
- 4.28 The Applicant fails to comment on the evidence given by the PCT during an oral hearing re SHA/15040 on which he is relying on. Jhoots quote Section 3.3.3 “The PCT accepted that the

Pharmacy (Belsize Avenue) had closed. It dispensed very low numbers of Prescriptions. Arrangements have been made for patients to go elsewhere. There has been no disruption; the proof was there had been no complaints. The closure had not had a devastating effect on the neighbourhood, or left a significant gap in provision of services’

- 4.29 The Applicant fails to comment on Section 3.3.7 of SHA/15040 where the PCT continue “The Pharmaceutical needs assessment had been updated in 2008 and concluded there were no areas where pharmaceutical services could be considered inadequate. The local PCT congratulated the PCT on its work. The PCT continued that the Closure of the Pharmacy in Belsize Avenue was not significant”
- 4.30 In Section 3.4.5 of SHA/15040 the PCT refer again to the very low number of prescriptions dispensed at Belsize Avenue and thought that its closure would not have affected the Pharmaceutical Needs Assessment.
- 4.31 The Applicant states there is a lack of services in the area, however the PCT contradict this stating that services are adequate for the needs of the neighbourhood as shown above.
- 4.32 The Applicant states that as there are no services within the area then there can be no complaints about the lack of services within the area. This is simply illogical and untrue. The PCT have a requirement to ensure adequate services and have a similar responsibility to provide a full complaints procedure and PALS. If the residents of the area had concerns about any lack of Pharmaceutical service within the area then there are plenty of routes of complaint available to them. The PCT’s Pharmaceutical Needs Assessment has shown that the needs of the population of Peterborough are adequately provided for.
- 4.33 The Applicant states that until the middle of this year there were enhanced services available from Belsize Avenue. However in section 3.4.3 of SHA/15040 the PCT clearly states that the Pharmacy in Belsize Avenue “had not provided any Enhanced or Advanced Services”
- 4.34 For the above reasons Jhoots Pharmacy would kindly ask the Appeal Unit to reject this application accordingly and dismiss the appeal as adequate pharmaceutical services are already provided

Cambridgeshire & Peterborough Local Pharmaceutical Committee

- 4.35 Since receiving notification of the appeal the application was reviewed by Cambridgeshire and Peterborough Local Pharmaceutical Committee (LPC) and interested parties declared their interest.
- 4.36 The LPC is still of the opinion, as laid out in its letter 7 May 2009 that until 31 March 2009 pharmacy services were provided in the area of Belsize avenue. The closure of a pharmacy has reduced choice for the public. The LPC considered the application necessary on the basis that there should be a continuation of provision of pharmaceutical services.

M Nanji (Applicant)

- 4.37 The original application for a pharmacy in Woodston had a clearly defined neighbourhood outlined.
- 4.38 At that time, the only other pharmacy within the area was Odedra’s Chemist in the Fletton neighbourhood. Subsequently another application was granted 3 years ago for the Sugar Way new development area which is now referred to as Jhoots Pharmacy. Again, the neighbourhood was clearly defined, therefore this application covers boundaries previously defined when Woodston Pharmacy was granted approximately more than 15 years ago as its original application on a necessary and desirable rule.
- 4.39 The area has not significantly changed and the applicant would therefore expect the three defined neighbourhoods to remain the same.

- 4.40 On the grounds that the nearest pharmacy, Jhoots Pharmacy was granted their application as being a separate neighbourhood, the applicant would strongly deduce that Woodston is also defined as a separate neighbourhood. This would help to continue the pharmaceutical needs of the area prior to Woodston Pharmacy's closure.

Peterborough Primary Care Trust

- 4.41 This application by Mr Nanji is in the same neighbourhood as an appeal decision made by the FHS Appeals Unit (SHA 15040) in July 2009. The outcome of the appeal was that provision of pharmaceutical services in this neighbourhood is adequate.
- 4.42 The crux of Mr Nanji's appeal seems to be that closure of a pharmacy in this neighbourhood has resulted in a lack of pharmaceutical services in this area. The above decision by the Appeals Unit was taken with the knowledge that a pharmacy in this neighbourhood, in (or very close to) the same location as Mr Nanji's application, had recently closed. Despite this closure the Appeals Unit considered pharmaceutical services in the neighbourhood to be adequate.
- 4.43 Therefore we ask the Appeals Unit to uphold the PCT's original decision to reject this application.

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 12(1), the necessary or expedient 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 this was an application for inclusion in the PCT's pharmaceutical list at 123 Belsize Avenue, Woodston, Peterborough PE2 9HY.
- 5.7 The Committee noted the PCT's defined neighbourhood for the proposed pharmacy as shown on a map (circulated to parties on appeal). Whilst the parties made references to neighbourhood, none including the applicant, had provided information to show conclusively that it should be other than as defined by the PCT. After having considered the information in respect of the application, the Committee determined to adopt the PCT neighbourhood for the purposes of determining the appeal.
- 5.8 The Committee noted comments regarding the fate of a previous pharmacy, the Committee has however determined the current application on its own merits.
- 5.9 The Committee noted claims that the area of the application is in one of, if not the most deprived areas of Peterborough. The Committee was mindful such populations usually have greater need for pharmaceutical services.
- 5.10 The Committee was aware of comments regarding population increase in the area due to new developments. The Committee attached little weight to these claims which lacked supporting

information, and fell short of demonstrating the need for an additional pharmacy in the neighbourhood.

- 5.11 The Committee noted there is one GP surgery and one existing pharmacy in the neighbourhood. With only one pharmacy, there is no choice in the neighbourhood, but this is not a decisive factor, there are already in excess of 20 pharmacies located within a 2 miles radius of the proposed site, three of which are located just outside the defined neighbourhood and are 100hr pharmacies. In their response to the appeal Jhoots Pharmacy claimed their pharmacy was approximately 0.4 miles from the proposed site and next to the main GP surgery in the area. Although the applicant made reference to the need to cross a main road, the Committee was not provided with any information to show that the population does not have reasonable access to existing pharmacies.
- 5.12 The Committee noted the applicant's proposed services and opening hours. However the Committee had no reason to believe these are not already, or cannot be provided by existing pharmacies.
- 5.13 In the Committee's view, taking into account the circumstances considered pertaining to the neighbourhood in question, balancing the existence of a pharmacy within that neighbourhood with the provision of pharmaceutical services outside the neighbourhood, 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 or 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.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr M Nanji – Applicant/Appellant
Mr A Patel – Halls the Chemist
Mr R Herbert – Jhoots Pharmacy
Ms R Bali – Cambridgeshire & Peterborough LPC
Mrs K Lockton – Boots UK Ltd
R Smith, Chief Pharmacists – Peterborough PCT